

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

77-6087

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ARTHUR C. LOGAN MEMORIAL HOSPITAL,

Plaintiff-Respondent,

-against-

PHILIP L. TOIA, as Commissioner of Social
Services of the State of New York, ROBERT
P. WHALEN, as Commissioner of Health of
the State of New York, JOSEPH A. CALIFANO,
Secretary of the U.S. Department of Health,
Education and Welfare,

Defendants,

-and-

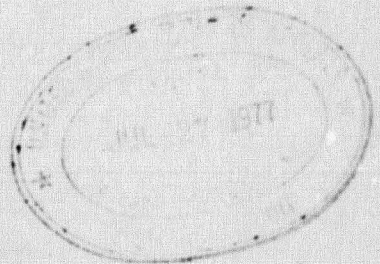
ABRAHAM D. BEAME, as Mayor of the City of
New York, HARRISON J. GOLDIN, Comptroller
of the City of New York, and DONALD
KUMMERFELD, as Director of the Budget of
the City of New York, and as pro tem
Administrator of the Health and Hospitals
Corporation,

Defendants-Appellants.

JOINT APPENDIX

W. BERNARD RICHLAND,
Corporation Counsel,
Attorney for Defendants-
Appellants,
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(212) 566-4337

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PAGINATION AS IN ORIGINAL COPY

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RELEVANT DOCKET ENTRIES

DIST/CFR/PC	VR	NUMBER	MO	DAY	YEAR	NS	O	R	23	5	DEMAND	JUDGE	JURY	DOCKET																			
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PLAINTIFFS ARTHUR C. LOGAN MEMORIAL HOSPITAL DEFENDANTS PHILIP L. TOIA, as Commissioner of SOCIAL SERVICES OF THE STATE OF N.Y. ROBERT P. WHALEN, as Commissioner of Health of the State of N.Y. HUGH L. CAREY, as Governor of the State of N.Y. JOSEPH A. CALIFANO, Secretary of the U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE ABRAHAM D. SCAPE, as Mayor of the City of N.Y. HARRISON J. GOLDIN, Comptroller of the City of N.Y. DONALD KUTNERFELD, Director of the Budget of the City of N.Y. and as proven Administrator of the Health and Hospital Corporation CAUSE Withholding reimbursement for services provided. Federal Medicaid Act of 1966																																	
ATTORNEYS MELVIN DOUGLAS RAYMOND 500 FIFTH AVE N.Y. N.Y. 10035 354-9248, 6363 LOUIS J. LEFKOWITZ (Atty. for defts. Toia & Whalen) Two World Trade Center New York, N.Y. 10047 488-3447																																	
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UNITED STATES DISTRICT COURT DOCKET

DC-111 (Rev. 1-74)

Clerk

Clerk

DC-111A REV. 11/7

RELEVANT DOCKET ENTRIES

77 civ 1216 ARTHUR D. L. GAN MEMORIAL HOSP VS PHILIP TOIA

OWEN J

DATE	NOL	PROCEEDINGS
3-14-77	1	Filed complaint and issued summons.
3-25-77	2	Filed Pltff's order to show cause and temporary restraining order - for preliminary injunction...OWEN.J. Ret. 3-31-77...Room 1505.
4-12-77	3	Filed defts. Toia & Whalen, affdvt. in opposition to plttf's request for preliminary injunction fand temporary restrianing order.
4-13-77	4	Filed defts. affdvt. in opposition to plttf's motion for a - preliminary injunction.
4-13-77	5	Filed memorandum of law, on behalf of deft. City Officials, in opposition to motion for a preliminary injunction.
4-14-77	6	Filed defts. HEW. affdvt. and notice of motion for an order pursuant to Rule 12(b) (1) of the F.R.Civ. P. dismissing the complaint for lack of subject matter jurisdiction, or alternatively, for an order pursuant to Federal Rule 56 granting summary judgment in favor of defts. Ret. 4-28-77.
4-14-77	7	Filed memorandum of law in support of defts. Caifano's motion to dismiss or for summary judgment.
4-15-77	8	Filed stip & Order that the time for defts. Abraham D. Beame, Harrison Goldin and Donald Kummerfeld to answer the complaint is ext.to 5-16-77 So Ordered.....OWEN.J.
4-15-77	9	Filed Stip & Order that the motion for preliminary injunction is adj. to 4-14-77 and that the temporary restraining order contained in the order to show cause dated March 24, 1977 shall remain in effect. according to its terms....So Ordered.....OWEN.J.
4-21-77	10	Filed defts. Toia & Whalen, ANSWERS to the complaint. (L J. L)
4-25-77	11	Filed defts. notice of motion for an order dismissing this action as to defts. Abraham D. Beam, Et.al. upon the ground tha the complaint fails to state a claim upon which relief can be granted.Ret.5-5-77.
5-3-77	12	Filed Memorandum & Order for the foregoing reasons, together with to those enunciated from the Bench on Apr. 21, I find that Logan has met its burden of showing "sufficiently serious questions going to the merits to make them a fair ground for litigation." The foregoing constitutes my findings of fact and conclusions of law. Submit order on notice by May 6, 1977....So Ordered.....OWEN.J. m/n
5-5-77	13	Filed Summons with Marshals return served: Arty General, Dept. of Justice by certified mail # 955268 on Mar. 17, 1977 J. Califano, Dept of HEW by certified mail # 955267 on Mar. 17, 1977 J. Califano by Ralph Lee on 3-17-77 Harrison J. Goldin by Natalie Head on 3-17-77 Philip L. Toia; Unable to serve. Gov. Hugh C. Carey, can only by served in Albany, NY Donald Kummerfeld by Ann Schonbuch on 3-29-77 Abraham D. Beame; Unable to Serve Robert P. Whalen by Andrew Krieyer on 3-15-77
5-11-77	14	Filed government's memorandum of law in support of defendant Joseph A. Califano motion to dismiss or for summary judgment.
5-12-77	15	Filed defts memorandum of law in reply to plttfs. opposition to dismiss complaint.
5-19-77		Filed memo end. on # 11 ... deft motion to dismiss is denied. Owen J. m/a
5-23-77	16	Filed plttf's affirmation in opposition to the deft's motion to dismiss complaint.
5-23-77	17	Filed plttf's Memorandum of Law in opposition to the deft's motion to dismiss.
5-23-77	18	Filed preliminary injunction and order enjoining defts form discontinuing ambulance feeder service etc. So ordered Owen J. m/a

RELEVANT DOCKET ENTRIES

PLAINTIFF		DEFENDANT		DOCKET NO.
Arthur C. Logan Mem. Hospital		Philip L. Toia, et al		77 Civ. 2
DATE	NR.	PROCEEDINGS	Owen, J.	PAGE 3 OF 2
5-26-77	19	Filed deft's Notice of Appeal to 2nd Circuit from ordered entered on 5-23-77. m/n.		
6-2-77	20	Filed transcript of record of proceedings, dated 4-14-77		
6-2-77	21	Filed transcript of record of proceedings, dated 4-21-77		
6-7-77	22	Filed stip. & Order extending time for defts. to answer complaint to 6-15-77.....Owen, J.		
6-8-77	23	Filed Transcript of record of proceedings, dated 5-12-77		
6-2-77	24	Filed affidavit of Milton Weinberg in opposition to motion for preliminary injunction.		

A TRUE COPY
 RAYMOND W. BUECHER, Clerk
 By *[Signature]*
 Deputy Clerk
 DC-111A REV 11/75

SUMMONS IN A CIVIL ACTION

SUMMONS

FD-114, 1a (2-64)
Prescribed by U. S. Form No. 12a Rev. (6-1955)

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

JOSE OWEN

CIVIL ACTION FILE NO. 77 Civ. 1216

77 Civ. 1216
(N. Y.)

ARTHUR C. LOGAN MEMORIAL HOSPITAL,

Plaintiff

SUMMONS

PHILIP L. TOIA, as Commissioner of Social Services
State of New York, ROBERT P. WHALEN, as Commis-
sioner of Health of the State of New York, HUGH L. CAREY, a
Governor of the State of New York, JOSEPH A. CALIFANO,
Secretary of the U. S. Department of Health, Education, and
Welfare, ABRAHAM D. BEAME, as Mayor of the City of
New York, HARRISON J. GOLDIN, Comptroller of the City
of New York, and DONALD KUMMERFELD, as Director of
the Budget of the City of New York, and as pro tem Admin-
istrator of the Health and Hospitals Corporation,
To the above named Defendants:

You are hereby summoned and required to serve upon

M. DOUGLAS HAYWOODE, ESQUIRE

plaintiff's attorney, whose address

500 FIFTH AVENUE, NEW YORK, NEW YORK 10036, 56Flr.

an answer to the complaint which is herewith served upon you, within 20 days after service of this
summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be
taken against you for the relief demanded in the complaint.

RAYMOND F. BUNGHADOT

Clerk of Court.

G. Harbison

Deputy Clerk.

Date: MAR 14, 1977

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
ARTHUR C. LOGAN MEMORIAL HOSPITAL,

Plaintiff,

77 Civ.

-against-

PHILIP L. TOLA, as Commissioner of Social Services of the State of New York, ROBERT P. WHALEN, as Commissioner of Health of the State of New York, HUGH L. CAREY, as Governor of the State of New York, JOSEPH A. CALIFANO, Secretary of the U.S. Department of Health, Education and Welfare, ABRAHAM D. BEAME, as Mayor of the City of New York, HARRISON J. GOLDIN, Comptroller of the City of New York, and DONALD KUMMERFELD, as Director of the Budget of the City of New York, and as protem Administrator of the Health and Hospitals Corporation,

Defendants.

COMPLAINT

-----x
Plaintiff, ARTHUR C. LOGAN MEMORIAL HOSPITAL, complaining of the defendants, and each of them, respectfully allege:

PRELIMINARY STATEMENT

1. This is an action for preliminary and permanent injunctive relief and a declaratory judgement brought by the Arthur C. Logan Memorial Hospital, Inc. located in the City and County of New York, State of New York, in its own behalf as a non-profit voluntary hospital for due compensation and other emoluments owed from its rendering hospital services to patients under the joint federal and state medical assistance program provided for under title XIX of the Social Security Act, 42 USC S. 1396 *et seq.* ("The Medicaid Program").

2. Since January, 1975, and for extensive periods prior to this time the defendants acting individually, jointly, and sometimes in concert have refused to make proper reimbursement for the hospital's reasonable cost as a provider for medical services rendered pursuant to the New York State Plan for medical assistance

COMPLAINT

("State Plan") enacted pursuant to their approval of the Secretary of the U. S. Department of Health, Education and Welfare ("Secretary") and title XIX of the Social Security Act, 42 USC S. 1396-1396i ("Medicaid Act").

3. The defendants, City of New York, acting through its Budget Director and protem Administrator of its Health and Hospitals Corporation, Donald Kummerfeld, and its Comptroller, Harrison J. Goldin, in constructing a system and method of reimbursement for said services provided by the Arthur C. Logan Memorial Hospital, has not only failed to reimburse the "reasonable costs" of the medical services required under the Federal Medicaid Act of 1966 and the subsequent enacted State Plan, but in addition, is wrongfully withholding \$2, 116, 260.64 million dollars owed the Arthur C. Logan Memorial Hospital without just cause and without even color of law. If the defendant, City of New York, with the acquiescence of the other defendants is allowed to and does continue its present course of action, it would render it impossible for the Arthur C. Logan Memorial Hospital to continue to provide those services which it has expended for over 115 years in the City of New York, forcing said hospital into liquidation.

4. By denying the Arthur C. Logan Memorial Hospital reimbursement for the reasonable costs of providing necessary health and hospital services to Medicaid patients, and by wrongfully withholding additional sums due and owing the hospital in accordance with the calculations of the defendants own State Plan, the defendants have violated and will continue to violate the Medicaid Act and Regulations; Articles I, V, XIV, and VI of the U. S. Constitution, Article I, Sections 6 and 7 of the New York State Constitution, the New York State Public Health Law, and the New York State Social Services Law.

5. Defendant, Joseph A. Califano is in violation of the Medicaid Act and its Regulations, and the Fifth Amendment to the U. S. Constitution by failing to insure compliance by the other defendants with the Medicaid Act and Regulations.

COMPLAINT

6. The defendants, Philip L. Toia, Robert P. Whalen and Hugh L. Carey are in violation of Article I, Sections 6, 7 and 11 of the New York State Constitution and the Fourteenth Amendment of the U. S. Constitution, as well as the Medicaid Act, and particularly 42 U. S. C. S.1396; the defendants, Abraham D. Beame, Harrison J. Goldin and Donald Kummerfeld, are violating the civil rights, privileges and immunities of the plaintiff, Arthur C. Logan Memorial Hospital, and denying it the equal protection of the laws in contravention of the above laws and statutes.

7. The defendant, State of New York, Philip L. Toia, Robert P. Whalen and Hugh L. Carey have in addition compelled the plaintiff, pursuant to an act of the New York State Legislature, Chapter 712 of the Laws of 1972, to provide medical care to all persons requiring emergency and follow-up in-patient treatment without regard to their ability to pay for said services. The functional result of this requirement, given the demographic, economic and ethnic population distribution of the inner city urban blighted area serviced by the Arthur C. Logan Memorial Hospital is to create a perpetual deficit due to inability of the plaintiff to obtain reimbursement from this patient population which deficit has amounted to one million dollars yearly since the time of the enactment of said law. Plaintiff is required to provide said services, to maintain its license as a hospital in the State of New York, but this obligation results in said State taking the property and services of the plaintiff without just compensation and is confiscatory of said services in violation of the Fourteenth Amendment of the U. S. Constitution and Article I Sections 6 and 7 of the New York State Constitution.

8. The defendant, City of New York, acting through its Department of Health has in addition withheld some \$104, 632.00 in funds due the plaintiff pursuant to the so-called Ambulatory Care, "Ghetto Medicine" program, Chapter 967, Laws of 1972, in which medical provider services have been rendered through December of 1976 and no compensation made without so much as color of law by the defendant, City of New York or the defendant, State of New York.

COMPLAINT

9. Plaintiff verily believes the defendant, City of New York and its agents and departments act in conspiracy and concert with others in denying the civil rights, privileges and immunities and equal protection of the laws to Arthur C. Logan Memorial Hospital for the purpose of advancing its own proprietary or pecuniary interest in its own Municipal Hospital system, consisting of 17 institutions, with a view toward rendering plaintiff to so precarious an economic impasse that liquidation must result, thus taking plaintiff from the field, so to speak, enhancing the economic interests of its own municipal system.

PLAINTIFF

10. Plaintiff, Arthur C. Logan Memorial Hospital is a non-profit voluntary hospital doing business in the City of New York at No. 70 Convent Avenue.

DEFENDANTS

11. Defendant Philip L. Toia, his predecessors in office, are, and at all times pertinent hereto were, the Commissioner or Executive Deputy Commissioner of Social Services of the State of New York ("Commissioner of Social Services"). The New York State Department of Social Services is the single state agency designated pursuant to the Medicaid Act and Regulations, the New York State Plan for Medical Assistance and the New York State Social Services Law to administer or supervise the administration of the medical assistance program under the Medicaid Act. In presiding and participating over and implementing the acts and omissions giving grounds for the action herein, defendant Toia acted, and is acting under color of law of the State of New York and contrary to the Constitution and Laws of the United States and the Constitution of New York State.

12. Defendant Robert P. Whalen, his predecessors, are, and at all times pertinent hereto were, the Commissioner of Health of the State of New York ("Commissioner of Health"). In presiding and participating over and implementing

COMPLAINT

the acts and omissions complained of by the Plaintiff, Defendant Whalen acted and is acting under color of law of the State of New York, but contrary to the Constitution and Laws of the United States and the Constitution and Laws of New York State.

13. Defendant Hugh L. Carey is, and at all times pertinent hereto was, the Governor of the State of New York ("Governor") and as such vested with the executive power of the State. In implementing and presiding over the wrongful acts and omissions of the defendants and participating therein, Defendant Carey has acted, and is acting, under color of law of the State of New York but contrary to the Constitution and Laws of the United States and the Constitution and Laws of New York State.

14. Defendant Joseph A. Califano is, and at all times pertinent hereto was the Secretary of the United States Department of Health, Education and Welfare and successor to F. David Mathews who formerly acted in this capacity, both being the federal officers ultimately responsible for the lawful administration of the Medicaid Program.

15. Defendant Abraham D. Beame at all times pertinent hereto was the Mayor and Chief Executive officer of the City of New York and acted while implementing and participating in said program under color of law but contrary to the Constitution and Laws of the United States and the Constitution of New York State.

16. Defendant Harrison J. Goldin at all times pertinent hereto was the Comptroller of the City of New York and acted while implementing and participating in said program under color of law but contrary to the Constitution and Laws of the United States and Laws of New York State.

17. Defendant Donald Kummerfeld at all times pertinent hereto was the Director of the Budget of the City of New York and pro tem Administrator of the Health and Hospitals Corporation, and acted while implementing and participating in said program under color of law but contrary to the Constitution and Laws of the United States and the Constitution and Laws of New York State.

COMPLAINTJURISDICTION AND VENUE

18. This action arises under the Medicaid Act, 42 USC S.1396 - 1396i, and the regulations promulgated thereunder, 42 USC S.1983; the Administrative Procedure Act, 5 USC S.701-706; Article VI of the United States Constitution; the Fifth and Fourteenth Amendments to the United States Constitution; the New York State Constitution; the New York State Public Health Law; the New York State Social Services Law.

19. Jurisdiction is vested in this Court under 28 USC S.1331, 1343, 1361, 2201, and 2202, 42 USC S. 1396a (g) and principles of pendent jurisdiction. The amount in controversy exceeds the sum of \$10, 000.00 exclusive of interest and costs.

20. Venue lies in this District pursuant to 28 USC S. 1391.

STATEMENT OF FACTS

21. Under 42 USC S. 1396, the United States acting through the Health, Education and Welfare Department and its Secretary, authorized States and their municipalities and other subdivisions to submit for its approval plans for the administering of the Medicaid Program. In implementation of said Program, the Government through H. E. W. has issued regulations concerning the methods for conducting said Programs throughout the nation and detailing certain formulas for computation of rates.

22. That in blatant disregard of the Medicaid Act and the regulations attendant to its implementation the defendants City of New York and more particularly, Abraham D. Beame as Mayor, Harrison J. Goldin, as Comptroller, and Donald Kummerfeld, as Budget Director, have wrongfully failed to reimburse the plaintiff, Arthur C. Logan Memorial Hospital some 2.12 million dollars since the beginning of January, 1976, which sums were due and owing to the plaintiff resulting from services rendered pursuant to said Medicaid Act and the State Plan approved by H. E. W.

COMPLAINT

23. When plaintiff requested payment from the defendant, Harrison J. Goldin, Comptroller of the City of New York, he advised payment of these sums could only be made pursuant to the direction of the defendants, Abraham D. Beame and Donald Kummerfeld.

24. In a meeting of January 3, 1977, the defendants, Donald Kummerfeld and Abraham D. Beame stated to the plaintiff's representatives and officials that they would look into the matter of reimbursing substantial parts if not all of the sum long outstanding.

25. That in a subsequent meeting in the Office of the Budget Director, defendant, Donald Kummerfeld on January 18, 1977, plaintiff was advised by the defendant, Donald Kummerfeld and the then Deputy Mayor, Hon. Paul Gibson, that consideration would be given to the payment of the plaintiff's money on y if the plaintiff submitted itself to a series of negotiations with representatives of the municipal hospital system, the Health and Hospitals Corporation, and the counsel for the City's Health and Hospitals Corporation for the purpose of effecting a merger between plaintiff's voluntary hospital and said municipal corporation .

26. That when plaintiff, in pursuit of the sums justly due and owing to it consented and participated in said negotiations, plaintiff was advised that the only plan being considered by the Health and Hospitals Corporation called for its termination and liquidation as a voluntary hospital and its possible merger into a "subsidiary corporation" of the Health and Hospitals Corporation. For all practical purposes and effect, the plaintiff was being asked to go into liquidation and become an arm of the City's municipal hospital system and the \$2, 116, 260.64 million dollars justly due and owing it was being held through what appears to be an act of coercion to compel and render the plaintiff to a situation where it would be forced to comply with the City's requests and go into liquidation.

COMPLAINT

27. That at all the times hereinafter referred to, the defendant, City of New York maintains an extensive municipal system of 17 hospitals, the parallel of which does not exist in any major city around the United States.

28. That at the time when the City is charged with the responsibility together with the defendant State of New York for administering the Medicaid programs and determining reimbursement rates for the plaintiff and other voluntary hospitals, the said defendants have acted in the same regard to its own so called municipal hospitals, owned and operated by its Health and Hospitals Corporation.

29. That a review of the formula for reimbursements under the Medicaid Act and payments actually made by the State clearly show that the defendants allow a rate of reimbursement pertaining to its own municipal hospitals far in excess of the rate allowed the plaintiff as a voluntary hospital, and the distinctions are so irrational as to exemplify invidious discrimination.

30. That the requirements of the Medicaid Act and regulations and implementation thereof called for the rewarding of the superior efficiency and organization which has reflected the operation of the Arthur C. Logan Memorial Hospital, but, in fact, the City penalizes this efficiency in contravention of the purpose and intent of said Act by implementing a lower reimbursement rate to the said plaintiff hospital.

31. Indicative of this situation is the fact that the Arthur C. Logan Memorial Hospital has consistently run an occupancy rate of approximately 86-87% over the last several years, currently since mid-1976 exceeding 90-95%, while a comparable municipal hospital, the Sydenham Hospital, has consistently run an occupancy rate of 68%.

32. The said Sydenham Hospital has in addition, recently closed some 60-70 beds so that the 68 percentile reflected would be much lower if the actual complement of beds were properly interpreted into the formula. These figures are published by the American Hospital Association.

COMPLAINT

33. Despite this fact and the obvious inefficient and otherwise wasteful operation of the said Sydenhame Hospital whose rate is \$176.52 per patient day and other municipal hospitals, its reimbursement rates under the State's calculations is in excess of that of the plaintiff, Arthur C. Logan Memorial Hospital, to wit, \$164.39 per medicaid patient day. Municipal rates of reimbursement average approximately \$220.00. Cumberland Hospital receives \$248.61 and the Harlem Hospital complex receives \$222.68.

34. That this is but one of a series of examples showing the uneven handed manner in which the defendants, City and State of New York have administered the Medicaid Act using a view toward protecting and developing their own proprietary interest in the maintenance of a health care system. Their methods reveal patent and invidious discrimination against plaintiff and others.

35. Commencing with January 1, 1976 and continuing through August 31, 1976 plaintiff had submitted \$4, 623, 541.25 in Medicaid billings to the defendant City of New York acting as agent for the defendant State of New York, representing actual and reasonable costs of services rendered by the plaintiff pursuant to the provisions and regulations of the Medicaid Act. Defendants have reimbursed plaintiff only \$4, 002, 641.42, withholding \$620, 899.83 wrongfully and without just cause or color of law.

36. Between October 26, 1976 and November 5, 1976, plaintiff submitted \$402, 234.49 in Medicaid billings reflecting the reasonable cost of actual services rendered and the defendants have refused wrongfully and without just cause or color of law to reimburse said monies.

37. Plaintiff submitted additional billings in the amount of \$611, 781.88 representing sums due for September and October, 1976 at a rate agreed upon by the defendants and this sum has been wrongfully refused and withheld without just cause.

COMPLAINT

38. That pursuant to a recent decision of this court made by the Honorable Judge Morris Lasker in December of 1976 enjoining the defendants, and each of them, from unlawfully imposing rates of reimbursement on plaintiff and other hospitals and fixing the proper rate in accordance with law for said reimbursement the sum of \$481, 344. 44 became due and owing plaintiff, but the defendants City of New York, acting through its Comptroller, Harrison J. Goldin and in concert with the others, has failed to provide said payment which is justly due and owing wrongfully and without just cause or color of law.

39. That as a result of defendants refusing to pay said sums, the plaintiff has been subjected to severe economic distress and brought to the brink of liquidation and dissolution.

40. In addition to the above, defendants have wrongfully, but under color of law, implemented the Medicaid program arbitrarily and capriciously without regard to the requirements of the enabling and controlling Federal statutes and regulations in such a manner that the concept of "reasonable cost" set forth in the Social Security Act has been savaged and the rates of reimbursement provided under the State Plan have been wholly inadequate and have borne little or no relationship to the actual costs incurred by the plaintiff as part of said formula plaintiff's costs are computed in tandem with 10 other hospitals to which it has no rational affinity.

41. Under the terms of the Social Security Act, participating vendor hospitals should have a positive incentive for efficiency in controlling costs related to duration of hospital confinement and bed utilization rates, but despite plaintiff's excellent record in effecting cost control methods, the defendants State and City of New York, have instituted multiple negative incentives in their carrying out of the so called State Plan, and have in fact penalized plaintiff by applying a formula which reduces on a two year prospective basis and trending the future reimbursement rate based on said

COMPLAINT

effected efficiencies. Through reductions in future rates to the extent of 100% of any and all effectuated economies thereby imposing all the hazard of a free market economy while denying the enjoyment of, or possibility of any of its benefits.

42. Pursuant to Chapter 712 of the Laws of the State of New York, enacted in 1972 (Section 2805a of the Public Health Law) requires:

"1. Every general hospital shall admit any patient who is in need of immediate hospitalization with all convenient speed and shall not before admission question the patient or any member of his or her family concerning insurance, credit, or payment of charges, provided, however, that the patient or a member of his or her family shall agree to supply such information promptly after the patient's admission.

2. In cities with a population of one million or more, a general hospital must provide emergency medical care and treatment to all persons in need of such care and treatment and applying to such hospital therefor. Such care may be provided or procured by the general hospital at a location other than the general hospital if, in the opinion of the attending physician, the general hospital does not have the proper equipment or personnel at hand to deal with a particular medical emergency.

Nothing in this act shall be construed to deny to the attending physician the right to evaluate the medical needs of persons applying to the hospital for emergency treatment and to delay or deny medical treatment where, in the opinion of the attending physician, no actual medical emergency exists. However, no person actually in need of emergency treatment, as determined by the attending physician, shall be denied such treatment by a general hospital in cities with a population of one million or more for any reason whatsoever."

43. As a result thereof, plaintiff and other vendor hospitals are required to render medical services to residents of the State of New York not qualifying for Medicaid privileges who due to the economic disabilities inherent in the character profile of the community serviced by this plaintiff, do not reimburse plaintiff for said services. Plaintiff has serviced since 1972 thousands of said citizens under this requirement imposed by the State of New York at an annual deficit of one million dollars. Failure to provide said service under the State's mandate would result in plaintiff's loss of licensing under the State Health Law.

COMPLAINT

44. Failure by the State to compensate or otherwise take into account this legislated deficit results in the virtual confiscation of said services without just compensation in violation of Article I Sections 6 and 7 of the New York State Constitution and the Fourteenth Amendment of the U.S. Constitution; by incorporation through the Fifth Amendment.

45. Pursuant to Chapter 967 of the Laws for the State of New York, for 1968, an Ambulatory Care Chetto Medicine program was instituted which plaintiff had participated in up through and including December of 1976. Defendants City and State of New York have wrongfully and arbitrarily refused to reimburse plaintiff for services rendered from July 1, 1976 through December 31, 1976 without just cause or color of law withholding in excess of \$104, 632.00 in furtherance of the apparent design and conspiracy to force plaintiff to liquidation. On June 30, 1975 defendant City of New York unilaterally cancelled a Community Mental Health and After Care Center with a value of \$300, 000.00.

46. For some period of time, the defendant, City of New York, through its Health and Hospitals Corporation, has contracted with the plaintiff, Arthur C. Logan Memorial Hospital by providing and participating in its ambulance service pursuant to contractual agreement through which service the plaintiff has been able to maintain a high utilization rate over the last several years from which its revenues are derived. Recognizing this fact, the defendant City of New York, through its Health and Hospitals Corporation has refused to formally execute the required contracts for said services since June of 1973, though all responsibilities and obligations pursuant to these contracts have continued in force and effect to this date.

47. Defendant City of New York, through its Health and Hospitals Corporation, has, however, from time to time, expressed and intimated in diverse ways and forums that it would unilaterally and capriciously terminate said ambulance service at any time, an act which would cost the plaintiff a minimum of \$250, 000.00 yearly.

COMPLAINT

48. The clear design, intent, and complicity of the defendant, City of New York in this matter is clearly evidenced by the fact that defendant, Donald Kummerfeld, presently functions not only as Budget Director to defendant, Abraham D. Beame, Mayor, but also as interim chairman of the Health and Hospitals Corporation Board, which agency is the signatory for such ambulance service. Defendant Kummerfeld's role and involvement in the multi-dimensional efforts to bankrupt the plaintiff has been all pervasive as may be culled from his ubiquitry eminence in the allegation of facts above.

STATUTORY CLAIMS

49. The State and City defendants have violated and continue to violate the Medicaid Act and Regulations and the State Plan through which it implements the said Act by refusing to make reimbursements at the rates set by the defendants themselves. They have further placed unlawful ceilings on said reimbursement rates.

50. The City and State defendants act in violation of the New York Public Health Law and the New York Social Service Law by arbitrarily denying plaintiff, Arthur C. Logan Memorial Hospital the reasonable costs of its inpatient and outpatient service provided to Medicaid clientele.

CONSTITUTIONAL CLAIMS

51. The defendants, City and State of New York's failure to pay the sums sued for herein, and the defendant, Secretary of Health, Education and Welfare's failure to insure compliance with the laws violates the supremacy clause of the U. S. Constitution, Article VI, in that the said acts are in contravention of Federal regulation in an area precepted by said regulations and legislation.

52. The methods and acts of the defendants State and City of New York with regard to the implementation of laws mandating unreimbursed treatment of the

COMPLAINT

non-Medicaid eligible, yet indigent population violate the due process clause of the Fourteenth Amendment to the U.S. Constitution; Article I Sections 6 and 7 of the New York Constitution, insofar as they are confiscatory in nature and deprive the plaintiff of property without due process of law or just compensation, and further deny plaintiff privileges and immunities and the equal protection of the law.

53. The acts of the defendants, City and State of New York violate Article I Section 10 of the U.S. Constitution insofar as they unilaterally, arbitrarily, and capriciously seek to modify and revise, retrospectively contractual obligations in existence and previously relied upon by the plaintiff and said City and State of New York, with the Federal government.

54. Plaintiff, Arthur C. Logan Memorial Hospital has suffered and will continue to suffer immediate and irreparable injury unless the defendants cease and desist from the course of action described above and plaintiff presently possesses no meaningful or adequate remedy at law.

WHEREFORE, plaintiff seeks judgement:

(a) That this court preliminarily enjoin the said City and State defendants, their successors, officers, agents, servants, employees and attorneys from continuing to arbitrarily deny reimbursement in accordance with the rates previously set by them with the plaintiff, Arthur C. Logan Memorial Hospital, and from withholding reimbursement for the actual reasonable costs of the provision of said services;

(b) That this court enjoin the City and State defendants, their successors, officers, agents, servants, employees and attorneys from further failing to comply with all Federal laws, rules and regulations of the U.S. Department of Health, Education and Welfare applicable to the New York Medicaid program, so long as the State of New York is allowed to participate in said program;

(c) That this court declare and adjudge that the failure of the defendant State of New York to reimburse plaintiff for services rendered pursuant to the

COMPLAINT

mandate of Chapter 712 of the Laws of 1972 of the State of New York is unlawful and illegal:

(d) That this court enjoin defendant, Califano, Secretary of the U. S. Department of Health, Education and Welfare, his successors, officers, agents, servants, employees and attorneys from participating in and ratifying or affirming in any way the aforesaid acts of the defendants, City and State of New York and order said defendant, Califano to exercise his authority and compel the defendants, City and State of New York to comply with the Medicaid Act, and Regulations;

(e) That the defendant, City of New York be ordered to pay over forthwith all sums presently held without just cause due and owing to the plaintiff in contravention of its rights; together with all interests and related expenses including counsel fees.

(f) That the defendants, City and State of New York be permanently enjoined from operating and otherwise functioning under said State Plan in such a way as to favor its own proprietary interest in its municipal hospital system to the detriment of plaintiff and similarly situated institutions;

(g) That this court appoint a Federal Master, Monitor, or Referee to supervise and oversee the implementation of said State Plan by the defendants City and State of New York for a period of one year or more to insure its compliance with principals of equity and said law, pending this action to prevent irreparable injury and preserve the status quo as immediate and irreparable injury will result from the defendants continuing in this course of action.

AND, that plaintiff be awarded the costs and legal expenses for the bringing of this action, and upon finding the defendants City and State of New York are acting in conspiracy herein, for the express purpose of compelling plaintiff, Arthur C. Logan Memorial Hospital, to become bankrupt, awarding plaintiff five million dollars (\$5, 000, 000.00) in punitive and exemplary damages, together with such other and further relief as the Court deem just and proper.

COMPLAINT

Dated: New York, N.Y.
March 14, 1977

M. DOUGLAS HAYWOOD, ESQ.

Attorney for Plaintiff
Office & P.O. Address
300 Fifth Avenue
New York, N.Y. 10016
Tel.No. (212) 354-6363

By: RAMSEY CLARK, ESQ.
Counsel

ORDER TO SHOW CAUSE FOR PRELIMINARY
INJUNCTION AND T.R.O.

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

ANTHONY D. LOJAN, DEPUTY ATTORNEY GENERAL,

Plaintiff,

-against-

PHILIP L. TOLA, et al

Defendants.

Civil Action No. 77 Civ. 116
R.O.

ORDER TO SHOW CAUSE
FOR PRELIMINARY
INJUNCTION AND
TEMPORARY RESTRAINING
ORDER

This Cause coming on for hearing upon the application of Plaintiff for an order to show cause and for a temporary restraining order and preliminary injunction as prayed for in the complaint on file herein, and it appearing from the allegations of the complaint, and from the affidavit of WILLIAM O. ALLEN, and affirmation of M. DOUGLAS BAYWOOD attached to and incorporated in said motion, that Plaintiff is entitled to such relief unless good cause to the contrary be shown. It is hereby

ORDERED, that the defendants and each of them be and appear before the Honorable RICHARD OWEN, a judge of this Court, in the United States Court House, at Foley Square on the 31st day of March, 1977 at the hour of 10:00 o'clock A.M. and then and there show cause, in Room 1505, if any there be, why this Court should not issue a preliminary injunction order as pursuant to FRCP 65 (a) as prayed for in said complaint. And it is further

ORDERED, that copies of this order be served personally upon the defendants or their attorneys, together with copies of the summons and complaint, by 2:00 P.M. on March 13, 1977, but inability to obtain such service upon any of the defendants shall not operate to stay or postpone said show cause hearing as to defendants who are served with this Order prior to such hearing. And it is further

ORDERED, that security herein be waived; and it is further

77 MAR 14 11:11

ORDER TO SHOW CAUSE FOR PRELIMINARY
INJUNCTION AND T.R.O.

ORDERED, that pending a hearing in this matter, the defendants and each of them, their agents, servants and attorneys are temporarily restrained from committing any act to discontinue the emergency ambulance (teler service) agreement presently in effect between the parties.

Done at NEW YORK, N.Y., this 14th day of March, 1977.

3/ RICHARD J. EVEN
U.S. DISTRICT JUDGE

ISSUED AT

1:27 P.M.

AFFIDAVIT OF WILLIAM O. ALLEN IN
SUPPORT OF ORDER TO SHOW CAUSE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ARTHUR C. LOGAN MEMORIAL HOSPITAL,

Plaintiff,

- against -

AFFIDAVIT

PHILIP L. TOIA, et al

Defendants.

STATE OF NEW YORK)
) ss.: s
COUNTY OF NEW YORK)

WILLIAM O. ALLEN, being duly sworn, deposes and says:

1. That he is the Executive Director of the plaintiff, ARTHUR C. LOGAN MEMORIAL HOSPITAL, in the above entitled action.

2. That this is an action for preliminary and injunctive relief and declaratory judgment brought by said Arthur C. Logan Memorial Hospital for compensation and other emoluments owed from rendering of services pursuant to Title XIX of the Social Security Act, 42 USC §. 1396 on the grounds that the defendants, City of New York acting thru its Budget Director and present Administrator of its Health and Hospitals Corp., Donald Kummerfeld, and others are engaged in an active conspiracy to force the plaintiff, Arthur C. Logan Memorial Hospital into liquidation and bankruptcy pursuant to its filing of a petition under Chapter XI §. 311 of the Bankruptcy Act on October 26, 1976, for the purpose of enhancing its own 17 institution municipal hospital system.

3. The defendants, ABRAHAM D. BEAME, as Mayor of the City of New York, DONALD KUMMERFELD, as Director of the Budget of the City of New York, and HARRISON J. GOLDEN, Comptroller of the City of New York, are presently withholding \$2,116,260.64 due and payable to the plaintiff without just cause, and have continued to so withhold funds necessary to the business and survival of the hospital for a period of the last six to nine months.

AFFIDAVIT OF WILLIAM D. ALLEN IN
SUPPORT OF ORDER TO SHOW CAUSE

4. The defendants' physicians, have refused to accept payments for the plaintiff's services performed under an agreement, were certified amounting to \$104,612.00 thru December of 1976 due to plaintiff's rendering of said services.

5. The defendants Health and Hospitals Corp. is withholding payment of the sum of \$127,500.00 due pursuant to an ambulance service agreement, executed in nature, for the last six months ending March 31, 1977.

6. The withholding of these funds by the defendant, City of New York, has induced an unreasonable cash flow crisis for the Legia Hospital and, on information and belief, the defendants have advised many persons, and have been quoted in the New York Times newspaper, as well as having stated to defendant's representatives that the clear intent and purpose of their withholding said sums are to force the closing of plaintiff, Arthur C. Legia Memorial Hospital and its liquidation in the Bankruptcy Court, despite the fact that the hospital presently enjoys an occupancy rate of almost one hundred per cent, and sometimes in excess thereof on a daily basis.

7. On information and belief, defendants intend to close the Arthur C. Legia Memorial Hospital for the purpose of maintaining its own institution in the western central Harlem areas, the Sydenham Hospital, whose occupancy rate is less than sixty per cent, greatly below the acceptable operational occupancy rate for hospitals nationwide of seventy-four per cent.

8. Defendants, through the General Counsel for the Health and Hospitals Corp. of the City of New York, have now advised the hospital's representatives and attorneys of their intention to unilaterally cancel the emergency ambulance service agreement in effect between the parties in an effort to strangle and obstruct the flow of patients into plaintiff's hospital.

9. Said defendants well knew that between January 1st and March 31st, 1977 of the 1,024 patients who have occupied the plaintiff's hospital beds, 336 were admitted pursuant to said ambulance service. The defendants seek, by this perfidious act to cut into 32.5% of plaintiff's patient population to effect their purpose of forcing

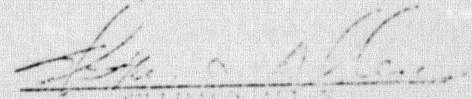
AFFIDAVIT OF WILLIAM O. ALLEN IN
SUPPORT OF ORDER TO SHOW CAUSE

and that the Court should be advised.

10. The defendants act in wicked and reckless disregard of the health and safety needs of the thousands of residents in the central and western Arizona community, a service by the plaintiff for the purpose of effecting their illegal and undecidable designs.

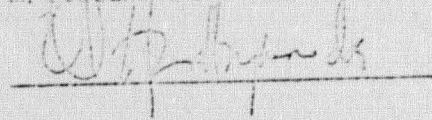
11. Unless defendants are enjoined and restrained during the pendency of this action from the commission of the acts as set forth above, the plaintiff will suffer great and irreparable damage in that it will be forced to close before any plenary hearing can be held with regard to the issues raised in this action, thus denying plaintiff its day in court, and frustrating the purpose and powers of this Honorable Court.

WHEREFORE, defendant respectfully requests that the signed Order to Show Cause be signed and entered herein and that this Court make and enter an Order granting the relief requested in said Order to Show Cause and such other and further relief as may be just.


WILLIAM O. ALLEN

Sworn to before me this 24th
day of March, 1977.

M. DONALD HAYWOOD, ESQ.



MELVIN DONALD HAYWOOD
Notary Public State of New York
No. 14 1000125
Qualified in Kings County
Commission Expires March 30, 1977

NEW YORK TIMES ARTICLES ANNEXED TO
AFFIDAVIT OF WILLIAM O. ALLEN

THE NEW YORK TIMES, THURSDAY MARCH 10, 1917

Hospital Agency Plans to Pressure Logan by Ending Ambulance Runs

By RONALD SULLIVAN

In the struggle for survival between the municipal Sydenham Hospital in Harlem and nearby Arthur C. Logan Memorial Hospital, a private voluntary institution that is in bankruptcy proceedings, the New York Health and Hospitals Corporation has conceived what is conceded is an unsportsmanlike tactic to force the closing of Logan.

The corporation's plan is to deprive Logan of patients. It would accomplish this by unplugging the hospital from the city-operated Emergency Medical Service, which relays the calls for ambulances received by the Police Department's Emergency Number 911.

"If they can't get any patients," a corporation official said last night, "then they can't get any money and they'll have to close."

William O. Allen, the executive director of Logan, cried foul.

"This is the worst, the most underhanded, the most devious attempt the city has tried so far to destroy Logan so that it can save Sydenham," he said. "They want to starve us out of business."

April 1 Deadline

Mr. Allen said that any disruption of the ambulance service feeding patients into Logan "could undo" the institution's efforts to survive at least until April 1, the deadline set by the city to decide whether Sydenham will remain open.

If Logan is still open on April 1, the corporation plans to close Sydenham. Conversely, if Logan is closed, then Sydenham will be kept open, most likely getting the patients that had been going

to Logan since both hospitals serve the same West Harlem area.

"The whole idea," said a corporation official yesterday, "is to make sure that Logan closes first."

With that end in mind, corporation officials, with the apparent support of city officials, are expected to propose to the corporation's board of directors that they approve discontinuing emergency ambulance service to Logan.

Immediate Effect Likely

While it could take well beyond the deadline to withdraw the city's financial support of the three ambulances operated by Logan, simply taking the hospital out of the 911 emergency communication system would achieve the immediate effect of halting patients being sent to Logan.

Under the system, the city is divided into emergency districts. If a call for an ambulance comes in from the district served by Logan, it would normally be referred to the call, sending its ambulance to pick up the patient. But if Logan is out of the system, it would have no way of knowing where its ambulances should go.

According to corporation officials, Logan's patients would be picked up by city-operated ambulances from Harlem and Sydenham hospitals, with most calls presumably diverted to Sydenham, which is underutilized and which needs more patients to survive.

Sydenham does not have an ambulance ramp, but an official there said that was not a problem. "We'll carry the patients in one way or another," he said.

NEW YORK TIMES ARTICLES ANNEXED TO
AFFIDAVIT OF WILLIAM O. ALLEN

the Court held that Federal Court could not interrupt pending state criminal prosecutions except under extraordinary circumstances.

Today the court said that this principle was valid not only in criminal and summary proceedings but also in at least some civil proceedings. The Court found that a state's interest in the contempt process, "through which it vindicates the regular operations of its judicial system," is "surely an important interest."

The contempt procedures in question are those that come into play after a creditor has won a judgment against a delinquent debtor. The law permitted the creditor to seek information from the debtor regarding his financial assets. If the debtor did not provide the information, the creditor could request the court to issue a contempt order, either forcing compliance or punishing refusal. The court could then fine the debtor and order him jailed.

The debtor who brought the case argued that the procedures did not provide adequate notice of the possibility of incarceration.

One of the six Justices who voted today to reverse the lower court, John Paul Stevens, said he did so because he found that these procedures, contrary to the lower court's finding, were constitutional. The five others who joined in the Rehnquist opinion were Chief Justice Warren, Justice Burger, Byron R. White, Harry A. Blackmun and Lewis F. Powell Jr. The case was *Judice v. Vail*, No. 73-1397.

The New York State Attorney General's office had argued before the Supreme Court that the Federal district court should have sustained from the case. It also defended the challenged provisions. The New York State Consumer Protection Board took the opposite position, on both points.

Pace University y Briarcliff College



Josiah Bunting 3d

with major New York City colleges or universities to maintain solvency. Briarcliff, according to Mr. Bunting, had a deficit of \$850,000, including a

budget before the end of this year begins a week from Thursday. The measure would like to have the basic budget rescinded by the end of this year.

At the end to the "save harmless" approach to school aid was a key part of the Governor's education package, which included a \$150 million cut in the state's \$2.5 billion education expenditure. All but

chairman wanted to get the public credit. Other cynics thought that the cuts would remain, but that the chairman wanted credit for having tried. The chairman of the Health Committee is Alan G. Hevesi, a Democrat of Queens, while the Ways and Means Committee is headed by Arthur J. Kremer of Long Beach, L. I.

Hospital Corporation Fiscal Plan Gets Back-Up Pledge From City

By RONALD SULLIVAN

The Beame Administration promised yesterday to bail out the New York City Health and Hospitals Corporation in the event the corporation's newly revised financial plan failed to eliminate a \$27 million deficit by June 30.

The agency, which operates the city's municipal hospitals, was ordered by the State Emergency Financial Control Board to eliminate the deficit so that its \$1.1 billion budget for the current fiscal year would be balanced when the period ended on June 30.

The corporation deferred any action on eliminating a \$29 million deficit that the state projects in the municipal hospital system in the fiscal year that begins July 1.

And instead of imposing the cutbacks in service and jobs that this year's \$27 million budget reduction normally would involve, the corporation approved a revised financial plan yesterday for submission to the Control Board. This plan depends primarily on job attrition and favorable financial decisions by the state and the courts to make up the deficit.

If Deficit Is Not Eliminated

In other words, said Donald D. Kummerfeld, the director of the city's Office of Budget and Management and the acting fiscal head of the corporation, the plan would not impose any closing upon the city's municipal hospitals.

Mr. Kummerfeld also told the board that if the savings projected in the plan failed to eliminate the deficit, the city would cover any loss up to \$23.3 million.

As for the complexities of the financial contingencies involved in the plan, Mr. Kummerfeld apologized for them and lik-

ened understanding them to "trying to follow the bouncing ball."

In response, Stephen Berger, the executive director of the Control Board, said he anticipated that the corporation's latest plan would be accepted, as long as the city identified where it planned to get the funds to cover the hospital deficit.

In another development, the corporation also approved keeping Sydenham Hospital open in Central Harlem. To accomplish this, the corporation plans to disconnect Arthur C. Logan Memorial Hospital, a private voluntary institution on the west side of Harlem from the city's emergency ambulance communications network.

Pressure on Logan Hospital

The move, to take effect this week, is calculated to deprive Logan of patients and thus force its closing.

Dr. John L. S. Honoman Jr., the outgoing president of the corporation, refused to support the move, saying that he did not want to "suck a knife in Logan's back."

The cutting off of Logan's ambulances is part of a double effort by the city to close the hospital, which already is in bankruptcy proceedings. The City Comptroller's office already is withholding \$2 million in Medicaid funds on the ground that the hospital is in debt to the city.

A Logan official said the hospital would attempt to get a court injunction against the ambulance cutoff. He said the institution could meet this week's payroll, but could offer no assurances about the future.

Beame Aides Say Staff Reductions Open More Jobs in Election Year

Continued From Page A1

agencies, and mayoral officials say this underspending is primarily because of lower-than-expected employment levels.

Comparable totals of city employees at different dates in the city's history are almost impossible to come by, because of the changing methods the Budget Bureau uses to count part-time employees and many other variations.

However, the Budget Bureau did provide comparable totals that excluded employees of the City Planning Commission and 13 other agencies that are not scheduled to suffer personnel reductions during the coming fiscal year.

were not supposed to be reached until July 1978.

For example, according to the Mayor's financial plan, the Board of Higher Education is supposed to reduce its work force to 13,063 by next July, and reduce it to 14,918 full-time employees by July 1978. But according to the Budget Bureau's own figures, the board was employing only 14,763 persons last December—nearly 500 fewer than the number the Mayor's plan indicated would not be reached until the middle of next year.

The Fire Department had 11,225 full-time employees paid with city funds last December, versus a projected level for July 1978 of 11,480. The Finance Department had 1,676 employees last December, versus a projected level for July 1978 of 1,676 employees last December.

27b

SUMMONS AND COMPLAINT

Printed herein at page 4a.

AFFIDAVIT OF GEORGE KALKINES DATED APRIL 11, 1977
IN OPPOSITION TO ORDER TO SHOW CAUSE

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

-----x
 ARTHUR C. LOGAN MEMORIAL HOSPITAL,

Plaintiff,

-against-

PHILIP L. TOIA, as Commissioner of Social Services of the State of New York, ROBERT P. WHALEN, as Commissioner of Health of the State of New York, HUGH L. CAREY, as Governor of the State of New York, JOSEPH A. CALIFANO, Secretary of the U.S. Department of Health, Education, and Welfare, ABRAHAM D. BEAME, as Mayor of the City of New York, HARRISON J. GOLDIN, Comptroller of the City of New York, and DONALD KUMMERFELD, as Director of the Budget of the City of New York, and as pro tem Administrator of the Health and Hospitals Corporation,

Defendants.

AFFIDAVIT

77 Civ. 1216
 (R.O.)

-----x
 STATE OF NEW YORK)
 : SS.:
 COUNTY OF NEW YORK)

GEORGE KALKINES, being duly sworn, deposes and says:

1. I am the Secretary and General Counsel of the New York City Health and Hospitals Corporation, a New York public benefit corporation.

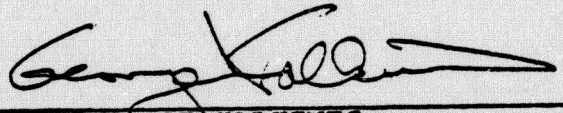
2. This affidavit is submitted in opposition to plaintiff's motion for a preliminary injunction.

AFFIDAVIT OF GEORGE KALKINES DATED APRIL 11, 1977
IN OPPOSITION TO ORDER TO SHOW CAUSE

3. Defendant Donald Kummerfeld, Director of the Budget of the City of New York, is not the pro tem Administrator of the New York City Health and Hospitals Corporation, nor is he an officer or director of the Corporation. He was appointed as a member of a special committee by the Board of Directors of the Corporation to prepare a revised budget and financial plan for the Corporation covering fiscal year 1977 and 1978. The resolution of the Board of Directors dated November 12, 1976 is annexed hereto (Exhibit A).

4. Dr. L. S. Holloman is still the President of the Corporation exercising all powers until April 30, 1977, when he will resign. A copy of the resolution of the Board of Directors dated the 26th day of January, 1977 is annexed hereto (Exhibit B).

5. Also annexed is the resolution of the Board of Directors dated February 10, 1977 terminating a subsidy for ambulance services at Logan Hospital (Exhibit C).


GEORGE KALKINES

Sworn to before me this

11th day of April, 1977.

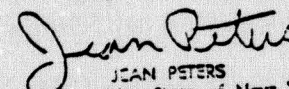

JEAN PETERS
Notary Public, State of New York
No. 31-4504495
Qualified in New York County
Commission Expires March 30, 1978

EXHIBIT A - RESOLUTION OF BOARD OF
DIRECTORS DATED NOVEMBER 12, 1976

ADDENDUM TO MINUTES OF THE BOARD OF DIRECTORS
MEETING HELD ON NOVEMBER 12, 1976

On November 3, 1976, the Board of Directors met in Executive Session with Mayor Beame and his staff and adopted the following resolution establishing a Special Committee. The resolution was adopted by a vote of 10 in favor, 1 opposed and 3 abstentions:

RESOLVED that the Board hereby establishes a Special Committee for the purpose of directing the timely preparation of a revised budget and financial plan for the Corporation covering Fiscal Year 1977 and 1978. Upon completion of such Plan and its approval by the Board, such Plan shall be submitted to the Emergency Financial Control Board ("EFCB") in satisfaction of requirements established pursuant to the Financial Emergency Act. The Special Committee shall examine the Corporation's ability to implement such revised Financial Plan and shall report to the Board any recommendations it may have for actions required to assist implementation during Fiscal Years 1977 and 1978, including appropriate management and organization improvements.

The Special Committee shall be empowered to employ such temporary consultants and advisors as are reasonably necessary to achieve its purpose and to cooperate fully with the City of New York in obtaining such assistance as the City may be able to render. The members of the Special Committee shall consist of the following:

Charles J. Bensley
John C. Burton
Donald H. Elliott
John L. S. Holloman, Jr., M.D.
Donald D. Kummerfeld
Paul Gibson, Jr.
Frank S. Folk, M.D.

Exhibit A

EXHIBIT B - RESOLUTION OF BOARD OF
DIRECTORS DATED JANUARY 26, 1977.

-5-

The motion was carried by a vote of 15 in favor and 1 abstention.

Mrs. Goldstein abstained on the basis that the motion was meaningless.

- The following motion by Mr. Gibson was acted on by the Board:

RESOLVED that the Board of Directors thank and commend Dr. Holloman for his leadership in the provision of health care to the citizens of New York; condemn those who have impaired the efforts of the Corporation, its Board and employees to provide quality health care; demand that critics of the Corporation make specific the substance of that criticism and forward same to the Board; that such criticism be reviewed by the Board and by Dr. Holloman and that Dr. Holloman be directed to consider reorganization and managerial changes, including his own resignation, if in his opinion he believes it would be in the best interests of the Corporation that he relinquish his leadership role.

The motion was rejected by vote of 7 in favor and 9 opposed.

- The following motion by Mr. Lechner, as amended, was acted on by the Board:

RESOLVED that the Board of Directors request of Dr. Holloman his resignation as President of the Corporation effective April 30, 1977, and request that until that time Dr. Holloman remain acting as President and exercise all the powers of the office of President and Chief Executive Officer.

The resolution was carried by a roll call vote of 9 in favor and 7 opposed as follows: -

NAY

Dr. Holloman
Dr. Cave
Dr. Christmas
Mr. Gibson
Mrs. Goldstein
Mr. Kirchman
Dr. Paulo

AYE

Dr. Imperato (2)
Mr. Bensley
Mr. Elliott
Dr. Folk
Mr. Lechner
Dr. Padilla
Mr. Smith
Mr. Michelson

Exhibit B

EXHIBIT C - RESOLUTION OF BOARD OF
DIRECTORS DATED FEBRUARY 10, 1977.

This resolution was adopted at a meeting of the Board of Directors held on Feb. 10, 1977 by a vote of 8 in favor and 2 abstentions.

RESOLUTION

Amending Three-Year Financial Plan re Sydenham Hospital
In-Patient Services

WHEREAS, on January 12, 1977 the Board of Directors adopted the Financial Plan for Fiscal Years 1977 and 1978; and

WHEREAS, said plan provided for the termination of in-patient services at Sydenham Hospital, and the administrative and professional merger of Sydenham with Harlem Hospital by April 1, 1977, subject to a determination as to the future of Arthur C. Logan Memorial Hospital; and

WHEREAS, the continued operation of Arthur C. Logan Memorial Hospital is seriously in question at this time given the adverse financial condition of that institution, and the fact that it has reportedly filed a Chapter XI bankruptcy proceeding; and

WHEREAS, the foregoing questions relating to Logan Hospital preclude a determination as to the potential utilization of Sydenham Hospital; now, therefore, be it

RESOLVED that the Three-Year Financial Plan relating to Sydenham Hospital be revised to provide for the continued operation of Sydenham Hospital; and be it further

RESOLVED that the Corporation's present agreements with regard to providing a subsidy for ambulance services at Logan Hospital be terminated, and that the Corporation shall undertake to provide such services to the ambulance district covered by such agreements.

Exhibit C

AFFIDAVIT OF MILTON WEINBERG DATED APRIL 13,
1977 IN OPPOSITION TO ORDER TO SHOW CAUSE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
ARTHUR C. LOGAN MEMORIAL HOSPITAL,

Plaintiff,

-against-

PHILIP L. TOIA, as Commissioner of Social Services of the State of New York, ROBERT P. WHALEN, as Commissioner of Health of the State of New York, HUGH L. CAREY, as Governor of the State of New York, JOSEPH A. CALIFANO, Secretary of the U.S. Department of Health, Education, and Welfare, ABRAHAM D. BEAME, as Mayor of the City of New York, HARRISON J. GOLDIN, Comptroller of the City of New York, and DONALD KUMMERFELD, as Director of the Budget of the City of New York, and as pro tem Administrator of the Health and Hospitals Corporation,

AFFIDAVIT

77 Civ. 1216
(R.O.)

Defendants.
-----x

STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

MILTON WEINBERG, being duly sworn, deposes and says:

1. That he is an attorney employed in the office of W. BERNARD RICHLAND, Corporation Counsel, attorney for the defendant City officials herein.

2. This affidavit is submitted in opposition to plaintiff's motion for a preliminary injunction.

AFFIDAVIT OF MILTON WEINBERG DATED APRIL 13, 1977 IN OPPOSITION TO ORDER TO SHOW CAUSE

3. There is presently pending a proceeding in the Bankruptcy Court of this district (76 B 2425) involving the plaintiff Hospital and the defendant City of New York, and deponent respectfully requests this Court to take judicial notice thereof for the purposes of this action.

4. For the convenience of this Court annexed hereto are the following papers which have been filed in that proceeding:

1. Summons and notice of trial.
2. Complaint Seeking Turnover of Withheld Funds to the Debtor in Possession.
3. Notice of motion to dismiss proceeding.
4. Affidavit in support of motion to dismiss.
5. Original petition under Chapter 11, Section 322 and affidavit under Rule XI-2 submitted by William O. Allen, Executive Director of Arthur C. Logan Memorial Hospital, Inc.

MILTON WEINBERG

Sworn to before me this

13th day of April, 1977.

Stephen M. Clayton

STEPHEN M. CLAYTON
Notary Public, State of New York
No. 21-277250
Qualified in New York County
Commission Expires March 30, 1980 73

SUMMONS AND NOTICE OF TRIAL

Mr. Ague
1650

United States District Court

For the SOUTHERN District of NEW YORK 250 Broadway

In re
ARTHUR C. LOGAN MEMORIAL HOSPITAL,
INC. f/k/a KNICKERBOCKER HOSPITAL,
~~Bankrupt~~ DebtorP & C
Bankruptcy No. 76 B 2425ARTHUR C. LOGAN MEMORIAL HOSPITAL,
INC.

Plaintiff

v.
THE CITY OF NEW YORK,
Defendant

SUMMONS AND NOTICE OF TRIAL

To the above-named defendant:

You are hereby summoned and required to serve upon LEVIN & WEINTRAUB, ESQS.

, plaintiff's attorney, whose

address is 225 Broadway, New York, New York, 10007

a motion or an answer * to the complaint which is herewith served upon you, on or before

the 31st day of March, 1977

, and to

file the motion or answer with this court not later than the second business day thereafter. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

You are hereby notified that trial of the proceeding commenced by this complaint has been set

for ~~March~~ APRIL 13, 1977, at 1:00 o'clock

p.m., in Courtroom 201

/s/ Judge Joel Lewittes
Bankruptcy Judge

By: LEVIN & WEINTRAUB

Address: 225 Broadway

New York, New York 10007

Date of issuance: March 13, 1977

* If you make a motion, as you may in accordance with Bankruptcy Rule 712, that rule governs the time within which your answer must be served.

COMPLAINT SEEKING TURNOVER OF FUNDS.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
In re

ARTHUR C. LOGAN MEMORIAL HOSPITAL,
INC. f/k/a KNICKERBOCKER HOSPITAL,

Debtor

ARTHUR C. LOGAN MEMORIAL HOSPITAL,
INC.

Plaintiff,

-against-

THE CITY OF NEW YORK,

Defendant.
-----x

COMPLAINT
SEEKING TURNOVER
OF WITHHELD FUNDS
TO THE
DEBTOR IN POSSESSION

77 MAR 18 PM 2:20

Plaintiff, complaining of defendant respectfully shows and alleges:

1. Heretofore, on October 26, 1976, the above debtor filed a petition under Chapter XI, §322 of the Bankruptcy Act and was thereafter continued in the management and operation of its business as debtor in possession pursuant to order of this court.

2. Plaintiff operates a voluntary not-for-profit hospital providing essential medical services to the West Harlem, New York City community. Plaintiff treats any and all persons seeking medical help on both an in-patient and out-patient basis.

3. Plaintiff has been and continues to be a participant in a program administered through the aegis of the United States Department of Health, Education and Welfare pursuant to the federal Medicaid program. Under this program, plaintiff receives funds from The City of New York, the defendant

COMPLAINT SEEKING TURNOVER OF FUNDS.

herein, which acts as a paying agent under the Medicaid program. In its capacity as agent, defendant is basically a conduit providing funds to this and other voluntary hospitals for in and out-patient services rendered by plaintiff to qualified persons as defined in Medicaid legislation. These qualified persons are basically indigent individuals whose income falls below certain federally established guidelines. All or substantially all of the patients treated at the plaintiff's Hospital qualify for Medicaid since plaintiff serves a ghetto community.

4. Defendant itself operates a group of municipal hospitals which serve the interests of basically indigent persons in various communities throughout the five boroughs. Over the years, the City hospitals have shown a demonstrable inability to service all of the patients who would ordinarily come to them for care. For this reason, a program was developed under Medicaid legislation whereby voluntary not-for-profit hospitals would be provided with funds sufficient to defray their expenses in treating Medicaid patients in conjunction with municipal hospitals.

5. Upon information and belief, the tremendous backlog of paper work and other matters attendant to the administration of the Medicaid program made it difficult if not impossible for defendant to effectively administer a program with voluntary hospitals such as Arthur C. Logan whereby a voluntary hospital can submit to defendant verified billings for care rendered to Medicaid patients and then obtain timely reimbursement for these services.

6. In order to assure that the voluntary hospitals could continue to service Medicaid patients, a program was developed whereby agreed-upon advances against future billings

COMPLAINT SEEKING TURNOVER OF FUNDS.

were made to voluntary hospitals by defendant as paying agent, pegged against historical billing cycles. In essence, while these payments are classified as advances, they are in fact no more than payment for services actually rendered which could not be and have not been rendered by municipal hospitals.

7. Internal accounting procedures unilaterally established by defendant have resulted in the creation by the defendant of what, in the case of plaintiff, amounts to an illusory indebtedness running from plaintiff to defendant on account of alleged overadvances. Defendant has, at various times, advised plaintiff that it owes substantial sums to defendant, the latest estimate of those amounts being approximately \$7 million. Plaintiff does not concede any liability to defendant.

8. Prior to the filing of the petition under Chapter XI and thereafter during the course of the administration of the proceeding, defendant has embarked upon a program designed to enable it to recoup the alleged indebtedness of plaintiff to it. Recoupment was accomplished by defendant unilaterally deducting from agreed monthly advances arbitrary sums which were applied by defendant against the allegedly outstanding obligation. Since the filing of the Chapter XI petition, certain funds have become due to plaintiff as a result of litigation which was pending at the time that the petition was filed, and these sums have also been withheld apparently to be employed as an offset against the alleged indebtedness. Plaintiff has calculated the total amounts which have been either withheld or erroneously applied as offsets to be \$2,106,921.54.

COMPLAINT SEEKING TURNOVER OF FUNDS.

9. Withholding of these funds by defendant has created an unconscionable cash flow crisis for plaintiff making it impossible to operate in the ordinary course. Plaintiff must continue to serve its patients and the community and cannot do so unless it receives payment for services rendered by it.

10. If, in fact, defendant alleges that it is entitled to offset monies which it owes to plaintiff against monies which defendant alleges is owed by plaintiff, plaintiff respectfully submits that it is incumbent upon defendant to come forward and prove the nature and extent of the claim against which it proposes to apply offsets. Plaintiff has substantial information available to it which indicates that defendant cannot establish with any degree of certainty any outstanding indebtedness, and if such is the case, then applicant believes defendant is taking action which should be prohibited in both law and equity. To permit arbitrary withholdings against an unestablished indebtedness as to the detriment of plaintiff, its patients and to all creditors in this proceeding is unjust and unwarranted and should not be countenanced by this Court.

11. Defendant must be directed by this court to prove a claim in accordance with provisions of the Bankruptcy Act liquidated as to amount before it can apply any offsets against such a claim.

12. If defendant does not come forward and prove the claim herein this court should enter judgment forthwith in the sum of \$2,106,921.54, that being the amount improperly withheld.

13. If defendant desires time within which to prove

COMPLAINT SEEKING TURNOVER OF FUNDS.

and establish its claim it should be directed to pay to plaintiff the aforesaid sum of \$2,106,921.54, pending a determination as to the amounts, if any, which may be due defendant from plaintiff. Alternatively, defendant should be directed to deposit that sum in a special interest bearing account restricted as to use and subject only to order of this court pending a determination of the issues raised by this adversary proceeding so that the income, if any, which may be earned by that fund can inure to the benefit of plaintiff should it prevail in this action.

WHEREFORE, plaintiff demands judgment granting the following:

- a) An order directing defendant to forthwith pay over to plaintiff the sum of \$2,106,921.54, or
- b) in the alternative, directing defendant to establish a special account in the amount of \$2,106,921.54, which account shall be employed to purchase Certificates of Deposit at prevailing rates of interest and shall be subject to the further order of this court upon the resolution of the dispute which is the subject of this action, and
- c) granting the plaintiff such other and further relief as may be just.

Dated: New York, New York
March 17, 1977

ARTHUR C. LOGAN MEMORIAL HOSPITAL,
INC.,

By: /s/
William O. Allen, Executive Director

LEVIN & WEINTRAUB

By: /s/ Myron Tepper
A Partner

NOTICE OF MOTION TO DISMISS PROCEEDING
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
In re

ARTHUR C. LOGAN MEMORIAL HOSPITAL,
INC. f/k/a KNICKERBOCKER HOSPITAL,

Debtor

In Proceedings for
an Arrangement
No. 76 B 2425

ARTHUR C. LOGAN MEMORIAL HOSPITAL,
INC.

Plaintiff,

- against -

Notice of Motion to
Dismiss Proceeding

THE CITY OF NEW YORK,

Defendant.
-----x

S I R S :

PLEASE TAKE NOTICE that upon the annexed affidavit of Aaron Klitenick, sworn to the 31st day of March, 1977, the undersigned will move this Bankruptcy Court, before the Honorable Joel Lewittes, Bankruptcy Judge, in Room 201 of the United States Courthouse, Foley Square, New York, New York 10007, on the 11th day of April 1977, at 10:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order pursuant to Rule 12(b) of the Rules of Civil Procedure dismissing this adversary proceeding on the ground that the Court lacks jurisdiction over the subject matter of the proceeding.

PLEASE TAKE FURTHER NOTICE that you are hereby required to serve any and all affidavits to be used in answer to this motion on the undersigned at least one day before the hearing on this motion.

Dated: New York, N.Y.
March 31, 1977

W. BERNARD RICHLAND
Corporation Counsel of
the City of New York
Attorney for Defendant

By Cornelius F. Roche
Cornelius F. Roche
Deputy Assistant
Corporation Counsel
Municipal Building
1 Centre Street
New York, N.Y. 10007
Tel. No. 566-3329

To: Levin & Weintraub
Attorneys for Plaintiff
225 Broadway
New York, N.Y. 10007

cfz/16AFFIDAVIT IN SUPPORT OF MOTION TO DISMISS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re

ARTHUR C. LOGAN MEMORIAL HOSPITAL,
INC. f/k/a KNICKERBOCKER HOSPITAL,

Debtor

In Proceedings for
an Arrangement
No. 76 B 2425

ARTHUR C. LOGAN MEMORIAL HOSPITAL,
INC.

Plaintiff,

Affidavit in Support
of Motion to Dismiss

-against-

THE CITY OF NEW YORK,

Defendant.

STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

AARON KLITENICK, being duly sworn, deposes and says:

1. I am the Chief of the Division of Charitable Institutions in the Office of the Comptroller of the City of New York and have been employed in the division since September of 1970.

2. This affidavit is submitted solely for the purpose of supporting defendant's motion for an order pursuant to Rule 12(b) of the Rules of Civil Procedure dismissing this adversary proceeding on the ground that the Court lacks jurisdiction over the subject matter of the proceeding.

3. The aforesaid Division of Charitable Institutions prospectively reimburses voluntary hospitals for medical care which they provide to Medicaid patients. Medicaid is a medical assistance program for the indigent, established under Title 11 of the New York Social Welfare Law, §§ 363 et seq., enacted pursuant to the Health Insurance for the Aged Act. 42 U.S.C. § 1395 et seq.

4. The eligibility of persons for medical assistance under the Medicaid program is determined in accordance with

AFFIDAVIT IN SUPPORT OF MOTION TO DISMISS

criteria set forth in N.Y. Social Welfare Law § 366. The reimbursement rates for medical care rendered to persons eligible under the program are set by the New York State Commissioner of Health and the New York State Director of the Budget pursuant to N.Y. Public Health Law § 2807.

5. The City is reimbursed by the State for seventy-five percent of the payments it properly makes to voluntary hospitals for services rendered by them to eligible Medicaid patients in accordance with the rates set by the State. The Federal Government reimburses the State for fifty percent of its costs under its Medicaid program.

6. The voluntary hospitals claim that, because of their cash flow problems, they must be reimbursed prospectively for services which they are to render to Medicaid patients. For this reason, the City agreed to make advances out of its own funds to the hospitals as pre-payments for services to be rendered by them in the future to Medicaid patients and, in consideration of such advances, the hospitals agreed that the advances be recouped by the City from any amounts which might thereafter become due to them for rendering such services.

7. Arthur C. Logan Memorial Hospital (Logan) participated in the above-described agreement. In accordance with the agreement, the City periodically made advances to Logan at its request. However, as of the filing of its arrangement petition on October 26, 1976, Logan had failed to render services to Medicaid patients of a value equivalent to the advances made to it by the City.

8. According to the books and records of your deponent's division, Logan was in deficit to the City in the sum of \$7,310,621.38 on October 26, 1976. This indebtedness arose because the advances made by the City to Logan had exceeded the billings submitted by Logan for services rendered to Medicaid

AFFIDAVIT IN SUPPORT OF MOTION TO DISMISS

patients by that amount. The aforesaid indebtedness of Logan was thereafter reduced by \$1,264,691.43 because of Logan's later submission of additional bills for services rendered to Medicaid patients prior to October 26, 1976. Accordingly, Logan's indebtedness to the City as of October 26, 1976, now amounts to \$6,045,929.95, for which the City has a bona fide claim against Logan.

9. In the past, Logan has continually admitted its liability to the City for the advances made to it and has recognized the City's right to recoup them. Moreover, the City's counsel has furnished your deponent with a copy of the original petition filed by Logan under Chapter XI, § 322, of the Bankruptcy Act, together with the exhibits attached thereto. (A copy of the petition and of the exhibits are attached hereto for the convenience of the Court.) One of the exhibits is a summary of Logan's assets and liabilities as of August 31, 1976. Listed on the summary as a liability is "Medicaid over-advances, subject to offset, approx. \$6,255,000." The other exhibit is an affidavit of William O. Allen, Logan's executive director, sworn to October 26, 1976. In his affidavit, Mr. Allen admits "that the city appears to have over-advanced to the hospital some \$6 million against Medicaid reimbursement requests" [par. 11(c), p. 3]; states that "In recent months the city has begun a program designed to reduce the outstanding over exposure on the previously over-advances to all hospitals * * * by withholding from each reimbursement check audit adjustment figures designed to repay the outstanding over-advances" [par. 11(c), p. 4]; and explains that "By virtue of the filing of a petition under Chapter XI of the Bankruptcy Act, the City of New York will no longer be in a position to apply monies due the hospital as a debtor in possession against sums outstanding on pre-Chapter XI over-advances" [par. 12(b), p. 5].

AFFIDAVIT IN SUPPORT OF MOTION TO DISMISS

¶ 10. The City has not set off any pre-Chapter XI over-advances against any amounts which have become due to the hospital as a debtor-in-possession for services rendered to Medicaid patients subsequent to the filing of the hospital's Chapter XI petition.

Aaron Kitenick
Aaron Kitenick

Sworn to before me this

31st day of March, 1977

Cornelius F. Roche

CORNELIUS F. ROCHE
Notary Public, State of New York
No. 21-3314785
Qualified in Kings County
Commission Expires March 22, 1977

ORIGINAL PETITION UNDER CHAPTER XI

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

76BKCY.2425

IN THE MATTER
OF

ARTHUR C. LOGAN MEMORIAL
HOSPITAL, INC. d/b/a
KNICKERBOCKER HOSPITAL,

Debtor.

ID #

Arrangement No. 76 3

ORIGINAL PETITION UNDER
CHAPTER XI, §322

1. Petitioner's post office address is 70 Convent Avenue, New York, N. Y. 10027.
2. Petitioner has had its principal place of business within this district for the preceding six months.
3. No other case under the Bankruptcy Act initiated on a petition by or against petitioner is now pending.
4. Petitioner is qualified to file this petition and is entitled to the benefits of Chapter XI of the Act.
5. Petitioner is insolvent.
6. Petitioner intends to file a plan pursuant to Chapter XI of the Act.
7. Exhibit A is attached to and made a part of this petition.

WHEREFORE, petitioner prays for the relief in accordance with Chapter XI of the Act.

ARTHUR C. LOGAN MEMORIAL HOSPITAL, INC.
Petitioner

By: William O. Allen
William O. Allen, Asst. Sec'y.

70 Convent Ave., New York, N. Y. 10027
Petitioner's Address

LEVIN & WEINTRAUB

By: Harris Levin
A Partner

225 Broadway, New York, N. Y. 10007

ORIGINAL PETITION UNDER CHAPTER XI

ARTHUR C. LOGAN MEMORIAL HOSPITAL, INC.

Summary of Assets & Liabilities

The following is a summary of assets and liabilities of the debtor compiled from financial data available as at August 31, 1976. Attempts have been made to update these figures to the present, and consideration should be given to the fact that further reviews of books and records are necessary before a final and complete summary can be made.

Liabilities

Taxes		\$ 3,615,000.
Secured debt:		
First National City Bank, secured		
by accounts receivable	\$ 350,000.	
Harlem Savings Bank, secured by		
mortgage on real property, approx.	<u>210,000.</u>	
	TOTAL	560,000.
Unsecured creditors:		
Trade and service payables, approx.	700,000.	
Accrued union benefits and employee-		
related expenses, approx.	1,300,000	
Medicaid over-advances, subject		
to offset, approx.	6,225,000.	
Medicare advances, approx.	1,736,000.	
Accrued expenses and misc., approx.	<u>300,000.</u>	
	TOTAL	<u>10,261,000.</u>
	TOTAL LIABILITIES	\$ 14,436,000.

Assets

Cash on hand, approx.	\$ 200,000.
Property, plant and equipment net of depreciation, approx.	1,400,000.
Inventory	260,000.
Accounts receivable (due from Medicaid and other	
third party reimbursors and subject to being	
offset against monies owed on over-advances)	4,548,000.
Prepaid expenses	<u>132,000.</u>
	TOTAL ASSETS
	\$ 6,540,000.

ORIGINAL PETITION UNDER CHAPTER XI

In re

ARTHUR C. LOGAN MEMORIAL
HOSPITAL, INC. f/k/a
KNICKERBOCKER HOSPITAL.

Debtor.

In Proceedings for an
Arrangement No. 76 B

AFFIDAVIT UNDER RULE XI-2

STATE OF NEW YORK)
 ss.:
COUNTY OF NEW YORK)

WILLIAM O. ALLEN, being duly sworn, deposes and says:

1. That he is assistant secretary and executive director of the above-named debtor herein, and makes this affidavit pursuant to Rule XI-2(b) of the Rules of this court.
2. That there is no other or prior bankruptcy proceeding.
3. That annexed hereto and marked Exhibit "A" are the names and addresses of the ten largest creditors, excluding those creditors who would not be entitled to vote at creditors' meetings pursuant to the provisions of §56(b) of the Bankruptcy Act; such creditors as were employed by the debtor at the time of the filing of the petition.
4. That suits have been instituted against the debtor as set forth in Exhibit "B" hereunto annexed and made a part hereof.
5. That there is no property of the debtor in possession in the custody of any public officer, receiver, trustee, assignee for the benefit of creditors, mortgagee, pledgee or assignee.
6. The debtor has the leases set forth in Exhibit "C" hereunto annexed and made a part hereof. That no negotiations have been entered into for a modification of said leases, except as indicated.

LEVIN & WEINTRAUB

By: Harris Levin
A Partner

225 Broadway, New York, N.Y. 10007

ORIGINAL PETITION UNDER CHAPTER XI

7. The debtor in possession will require approximately \$400,000 to defray ordinary and necessary operating expenses for a period of thirty days immediately following the filing of this petition.

8. The debtor anticipates that it will suffer a loss for the next thirty days of approximately \$100,000.

9. The debtor generates business at the rate of approximately \$15 million per annum and presently employs 314 persons.

10. Arthur C. Logan Memorial Hospital, Inc. and its predecessor Knickerbocker Hospital has continually operated as a hospital serving the community in which it is located since 1861. The hospital enjoys an outstanding reputation for patient care and community responsibility.

11. The financial difficulties of the debtor are attributable to the following circumstances:

a. The debtor suffers from a common malaise affecting hospitals generally in the City and State of New York. The debtor suffers from an inadequate cash flow since its revenues are based solely upon payments received from third party reimbursors such as Blue Cross, Blue Shield, Medicare and the City of New York as paying agent under federal medicaid programs. The reimbursement rates provided and determined by third party reimbursors are normally two to three years behind the inflationary spiral so that operating costs continually rise while reimbursement rates remain at a level less than adequate to defray those increasing costs. Constant audit adjustment requests are made and demands for increased reimbursement rates are processed on a regular basis. However, the time gap between the upward adjustment of reimbursement rates, when obtainable, and the actual increase in costs of operating a hospital keeps the debtor and

b. While reimbursement rates remain the same or climb slowly upward, the debtor is constantly faced with arbitrarily imposed federal and state mandates requiring costly modifications and alterations to its premises and often has imposed upon it sudden and unexpected cutbacks in federal and state funding for specific revenue producing programs, again decreasing the cash flow and operating deficit problems of the hospital.

c. Most recently the debtor has been faced with a newly imposed procedure adopted by the City of New York as paying agent for the federal Medicaid program, which has further exacerbated the debtor's financial problems. The city had over the years adopted a program of advancing funds to hospitals against anticipated billings to be made by the hospitals to the city and processed under the Medicaid program. This procedure was followed generally for all hospitals participating in the program so that a constant cash flow could be provided without requiring the city department which administers the program to process each individual request for reimbursement on a day to day basis.

As operations under this program proceeded, a substantial backlog was built up so that the city appears to have over-advanced to the hospital some \$6 million against Medicaid reimbursement requests which are processed on a day to day, ordinary course of business basis. The debtor understands that this \$6 million over advance is not unusual and is, in fact, only a small part of a debtor over-advance to participating hospitals by the city of some \$80 million.

A Partner

225 Broadway, New York, N.Y. 10007

ORIGINAL PETITION UNDER CHAPTER XI

In recent months the city has begun a program designed to reduce the outstanding exposure on the previously described over-advances to all hospitals. As a result, periodic reimbursement requests made by the debtor have been paid by the city with the city withholding from each reimbursement check audit adjustment figures designed to repay the outstanding over-advances. In some instances these audit adjustments result in a severereduction in reimbursement received by the hospital, and in some instances the hospital has received no more than 60% of that which it requested under normal reimbursement formulas.

The resultant effect on cash flow cannot be over-emphasized. The hospital has been unable during recent months to satisfy its obligations to the Internal Revenue Service regarding payments due for monies withheld from employees' salaries and owes the Internal Revenue Service substantial sums. The entire indebtedness due, representing several years of delinquency, approximates \$3.6 million. Arrangements had been made to liquidate that liability on an installment basis. However, because of the recent decrease in cash flow the hospital has been unable not only to pay against its old indebtedness, but has fallen further behind and has been advised by the Internal Revenue Service that unless the government receives some \$700,000 by the 26th of October, 1976, levy will be made on a pending tax lien, the obvious effect being to shut down the hospital and its operations.

d. In addition to the problems experienced with the City of New York as aforesaid, judgment has been recently rendered against the hospital and in favor of Local 1199, the bargaining entity representing over 70% of the hospital's employees, said judgment being in excess of \$370,000 and being the result of an

ORIGINAL PETITION UNDER CHAPTER XI

arbitration hearing. Execution under that judgment has been delivered to the Sheriff of New York County and it is believed that levy will be made thereon shortly. The hospital, of course, is not in a position to satisfy the judgment out of operating assets.

The debtor believes that it owes a responsibility to its patients, to its employees and to the community which it serves to avail itself of relief under Chapter XI of the Bankruptcy Act, with the hope and intention of formulating a plan with all of its creditors.

12. It is anticipated that future operating deficits can be eliminated for the following reasons:

a. Programs are being developed for a reduction in gross payroll by 15%, thereby cutting operating costs substantially.

b. By virtue of the filing of a petition under Chapter XI of the Bankruptcy Act, the City of New York will no longer be in a position to apply monies due the hospital as a debtor in possession against sums outstanding on pre-Chapter XI over-advances and thereby adequate cash flow will be relatively assured. It should be noted in this connection that the debtor has claims against the City of New York in excess of \$4 million under Medicaid reimbursement formulas and retroactive rate adjustments, which sums may possibly be the subject of offset, so that the magnitude of the City's alleged claim for over-advances to the debtor is not entirely as large as may initially appear.

13. The debtor intends to propose and formulate a plan with its creditors, the nature and extent of which cannot be intelligently estimated or described at this time. The nature and extent of the debtor's liabilities, as set forth in the

ORIGINAL PETITION UNDER CHAPTER XI

petition filed simultaneously herewith, clearly demonstrate that a liquidation of the hospital in bankruptcy would afford little or no dividend to creditors. More importantly, however, it must be borne in mind that we are here dealing with an entity which serves a significant and useful purpose in the community, providing high quality professional medical services to an economically depressed area. In addition, the debtor employs over 300 persons whose incomes are generally on the lower level of the economic scale and whose continued employment is clearly in the best interests not only of the community, but of the city as a whole. Experience has dictated that the road to rehabilitation in hospital Chapter XI proceedings is difficult; however, it is imperative that every effort be devoted towards a successful reorganization in these proceedings for all of the reasons set forth herein.

Wm. O. Allen
 WILLIAM O. ALLEN

Sworn to before me, this
 26th day of October, 1976.

James H. Brown
 JAMES H. BROWN
 Notary Public, State of New York
 No. 100000001
 Qualified in Kings County
 Commission Expires April 30, 1977

AFFIDAVIT OF MILTON WEINBERG DATED
APRIL 20, 1977 IN OPPOSITION TO
ORDER TO SHOW CAUSE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ARTHUR C. LOGAN MEMORIAL HOSPITAL,

Plaintiff,

-against-

PHILIP L. TOIA, as Commissioner of
Social Services of the State of
New York, et al.,

Defendants.

AFFIDAVIT IN OPPOSITION
TO MOTION FOR PRELIMINARY
INJUNCTION

77 Civ. 1216
(R.O.)

STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

MILTON WEINBERG, being duly sworn, deposes and says:

1. That he is an attorney employed in the office of
W. BERNARD RICHLAND, Corporation Counsel, attorney for the named
defendant City officials and the Board of Directors of the New
York City Health and Hospitals Corporation.

2. This affidavit is submitted in opposition to
plaintiff's motion for a preliminary injunction and is also
submitted in compliance with the request of this Court made on
April 14, 1977.

3. Annexed hereto is the affidavit of George Kalkines,
Secretary and General Counsel of the New York City Health and
Hospitals Corporation.

AFFIDAVIT OF MILTON WEINBERG DATED
APRIL 20, 1977 IN OPPOSITION TO
ORDER TO SHOW CAUSE

4. Also annexed hereto is a transcript of the special Board of Directors' meeting of the New York City Health and Hospitals Corporation of March 22, 1977.

5. The principles applicable to the granting of a preliminary injunction are well settled. Plaintiff must show a likelihood of success on the merits coupled with the threat of irreparable harm or demonstrate a balance of hardships tipping in its favor together with a serious question which raises substantial legal and factual issues going to the merits of the case. Stamicarbon, N.Y. v. American Cyanamid Company, 506 F.2d 532 (2d Cir. 1974).

6. It is hornbook law that plaintiff, to be entitled to a preliminary injunction, must demonstrate that this Court has jurisdiction and that the complaint states a valid claim. Thus, if it is evident that there is no claim upon which relief can be granted, this Court has the power on its own motion to dismiss the complaint. Robins v. Barback, 325 F.2d 929 (2d Cir. 1963) cert. denied 379 U.S. 974 (1965); Standard Oil Company of Texas v. Lobeno Gas Company, 240 F.2d 504 (5th Cir. 1957); 5 Wright & Miller, Federal Practice and Procedure, §1357, at p. 593, n. 43; 11 Wright & Miller, Federal Practice and Procedure, §2950, at p. 490, n. 58. See also Clinton Community Hosp. Corp. v. Southern Md. Med. Ctr., 374 F. Supp. 450, 453 (Dist. Ct. Md. 1974).

AFFIDAVIT OF MILTON WEINBERG DATED
APRIL 20, 1977 IN OPPOSITION TO
ORDER TO SHOW CAUSE

7. ~~In the instant case, the motion for the~~
preliminary injunction enjoining the Hospital Corporation
from terminating the emergency ambulance services should be
denied for failure to state a claim upon which relief can be
granted, since there is no valid federal claim stated in
regard thereto. Parenthetically, it should be noted that there
is not even a valid state claim asserted on the basis of a
prima facie tort. Even assuming that the Board of Directors
acted in part out of malevolence, which the Kalkines' affidavit
reveals they did not do, the complaint indicates legal justifi-
cation, to wit, the desire to "favor" Sydenham Hospital.
Reinforce, Inc. v. Birney, 308 N.Y. 164, 169 (1954), 124 N.E.2d
104, 106; Squire Records v. Vanguard Recording, 25 A.D.2d 190,
191-192 (1st Dept. 1966), 268 N.Y. Supp. 2d 251, 253-254.

8. Nor is there a valid federal claim with respect
to the \$2,116,260.04 allegedly owed to the plaintiff since
Logan can point to no provision of the Medicaid Act or regulation
which furnishes a valid federal claim against the named City
officials. Skelly Oil Co. v. Phillips Co., 339 U.S. 667, 671-2
(1950). Moreover, plaintiff's counsel has conceded that the
claim against the City of New York with regard to its reimburse-
ment rate is not valid since the State of New York alone fixes
that rate.

Milton Weinberg
MILTON WEINBERG

Sworn to before me this

20th day of April, 1977

Stephen M. Clayton

AFFIDAVIT OF GEORGE KALKINES DATED
APRIL 20, 1977 IN OPPOSITION TO
ORDER TO SHOW CAUSE.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
ARTHUR C. LOGAN MEMORIAL HOSPITAL,

Plaintiff,

-against-

PHILIP L. TOLA, as Commissioner of Social Services
of the State of New York, ROBERT P. WHALEN, as
Commissioner of Health of the State of New York,
HUGH L. CAREY, as Governor of the State of New
York, JOSEPH A. CALIFANO, Secretary of the U.S.
Department of Health, Education, and Welfare,
ABRAHAM D. BEAME, as Mayor of the City of New
York, HARRISON J. GOLDEN, Comptroller of the
City of New York, and DONALD KUMMERFELD, as
Director of the Budget of the City of New York, and
as pro tem Administrator of the Health and Hospitals
Corporation,

Defendants.

AFFIDAVIT
77 Civ. 1216
(R.C.)

-----x
STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

GEORGE KALKINES, being duly sworn, deposes and says:

1. I am the Secretary and General Counsel of the New York City Health and Hospitals Corporation, a New York public benefit corporation.
2. This affidavit is submitted in opposition to plaintiff's motion for a preliminary injunction.
3. That at the request of the Corporation Counsel's Office, on Tuesday, April 19, 1977, I telephoned the following members of the Board of Directors:

AFFIDAVIT OF GEORGE KALKINES DATED
APRIL 20, 1977 IN OPPOSITION TO
ORDER TO SHOW CAUSE.

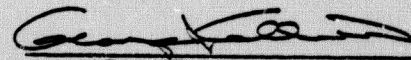
- 2 -

Charles J. Bensley
Pascal J. Imperato, M.D.
George L. Jurow, Ph.D.
William Michelson
J. Henry Smith
Arlene S. Goldstein
Elena Padilla, Ph.D.

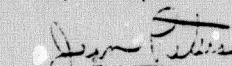
4. Dr. Elena Padilla is the only one of the members of the Board of Directors who adopted the resolution to continue Sydenham Hospital who I was unable to reach.

5. The members of the Board uniformly denied any attempt whatever to force the closure of Logan Hospital through their adoption of the resolution to continue the operation of Sydenham Hospital and to terminate the subsidy for ambulance services to Logan.

6. The Board members provided the following reasons for their action of February 10, 1977: the continuation of Sydenham Hospital as a viable health care facility; their desire to make the best possible use of public funds to support Sydenham; and their concern that essential services continue to be provided to the community particularly in light of reports of a worsening fiscal crisis at Logan Hospital which threatened its capability to remain in operation.


GEORGE KALKINES

Sworn to before me this
20th day of April 1977.


JEAN PETERS
Notary Public, State of New York
No. 31-4504495
Qualified in New York County
Commission Expires March 30, 1977

TRANSCRIPT OF MEETING OF BOARD OF DIRECTORS OF N.Y.C.
HEALTH AND HOSPITAL CORP. HELD MARCH 22, 1977

NEW YORK CITY DEPARTMENT OF HEALTH
HEALTH & HOSPITALS CORPORATION

----- x

SPECIAL BOARD OF DIRECTORS MEETING

143

March 22, 1977

10:00 a.m.

125 Worth Street
New York, New York

BEFORE: DR. PASCAL J. IMPERATO,

Chairman

ADLER REPORTING SERVICE
STENOGRAPH REPORTERS
18 PARK ROW
NEW YORK, N.Y. 10038
CORTLANDT 7-3343
CORTLANDT 7-3339
NIGHT PHONE 233-3151

Copy #2
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1 TRANSCRIPT OF MEETING OF BOARD OF DIRECTORS OF N.Y.C.
2 HEALTH AND HOSPITAL CORP. HELD MARCH 22, 1977

3 Board Members Present:

4 DR. JOHN L.S. HOLLOMAN, JR.
5 MR. CHARLES J. BENSLEY
6 DR. GEORGE GEROW
7 MRS. APLENE S. GOLDSTEIN
8 MR. MILTON F. KIRCHMAN
9 MR. WILLIAM MICHELSON
10 DR. ELENA PADILLA
11 MR. J. HENRY SMITH

12 Also Present:

13 BERNARD WEINSTEIN
14 WILLY MAUTNER

15 300

16 THE CHAIRMAN: I call the meeting to order.

17 This is a special meeting of the Board of Directors
18 of the New York City Health & Hospitals Corpora-
19 tion, Tuesday, March 22, 1977.

20 The first item is a report from the special
21 committee in preparation of the revised financial
22 plan for the EFCB.

23 DR. HOLLOMAN: I have in my hand a letter --
24 fiscal year 1977 financial plan revision. The
25 letter is from myself to the budget director,
26 Don Kummerfeld. I will transmit to him and I
27 will ask that we proceed to go through the con-
28 tents of it. I may point out that this was dis-
29 cussed yesterday at a meeting of the special

TRANSCRIPT OF MEETING OF BOARD OF DIRECTORS OF N.Y.C.
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1
2 finance committee and that it was recommended
3 to the Board for its action.

4 MR. KUMMERFELD: I think that there should
5 be a one-page sheet with a lot of numbers on it.
6 It is the last page.

7 MR. MICHELSON: One is dated the 15th and
8 one is dated the 21st.

9 MR. KUMMERFELD: It's the 21st.

10 In taking you briefly through the numbers,
11 we can then look at the latter and compare it to
12 it and see what the picture is. Refreshing your
13 memory, on February 25th the DFCD passed a resolu-
14 tion in two parts. One part asking for resubmission
15 for fiscal year 1977 by March 15th and part two
16 asking for resubmission of fiscal '78 by April 30th.
17 We informally ask for an extension of the March 15th
18 deadline on fiscal '77 until today, because we
19 did not have all the data in time to analyze it
20 and come to a considered judgment of what the
21 problems were.

22 This will be transmitted by the City to
23 the Board today. On all of the numbers there is
24 an agreement between the staff of the office of
25 Management and Budget and the Corporation who

TRANSCRIPT OF MEETING OF BOARD OF DIRECTORS OF N.Y.C.
HEALTH AND HOSPITAL CORP. HELD MARCH 22, 1977

have been working closely together on these numbers.

There are really no differences on view, or differences of fact, or views of fact or opinions between the Corporation and the City.

Now if you look at column 1, this is an estimate of the staff of the Emergency Financial Control Board regarding slippage, revenues that were put in these revised financial plans submitted on January 6, that are according to their estimates at the present time on the basis of the information that they have not going to occur. The items in the plan are listed under the first heading -- the first three items are rate determinations, the next four items are items that we can treat separately as we come to them.

Let me first summarize by saying that they take the opinion or the view that all of these presently estimated items, none of them will be reversed by subsequent appeal. A full amount of 22.6 of revenues will not be recognized in here.

In addition, the Corporation identifies additional problems that the EFCB was not aware of, but since it's our responsibility to meet our financial needs and not the EFCB's, we look

TRANSCRIPT OF MEETING OF BOARD OF DIRECTORS OF N.Y.C.
HEALTH AND HOSPITAL CORP. HELD MARCH 22, 1977

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2 at all of the problems whether identified by
3 the Control Board or not. There is no disagree-
4 ment between the Control Board staff and the
5 Corporation and the City with regard to these
6 additional items totalling 10.8.

7 The bottom indicates offsets to the
8 slippage from the revenues that were not in the
9 proposed financial plan for the January 6th
10 financial plan. I have been saying January 6th.
11 it's not January 6th, it was January 11th.

12 There is some disagreement again and I
13 will review what the specific items are. The
14 bottom line, in other words for the HFCB staff
15 taking what I would say is the worst case, meaning
16 that there is no case where there are any rate
17 determinations still pending would we get any
18 relief at all. That total, including the offset,
19 23.6 million. The right-hand column is the
20 estimate of the Corporation and the OMB. It is
21 in all fairness, I think, the best case. What
22 you really have is a worst case and the best case.
23 Where we have made assumptions that we will receive
24 relief from some of these appeals, either now
25 pending or that we intend to make, that comes

TRANSCRIPT OF MEETING OF BOARD OF DIRECTORS OF N.Y.C.
HEALTH AND HOSPITAL CORP. HELD MARCH 22, 1977

1 down to 9.4, after all the offsets. You've got
2 to weigh your kind of best case and worst case
3 from 8.4 million to 26.3 million.
4

5 In the transmittal letter to the EFCB,
6 the City will indicate that we will earmark
7 additional revenues that are not now in the City's
8 1977 financial plan. They are available to the
9 City within our overall plan to cover a deficit
10 up to 23.3 million dollars, although we are
11 certainly hopeful and we anticipate that deficit
12 will not go that high.

13 The difference between the 25.3 and 23.3
14 are two items up in the first section -- a
15 \$700,000 loss, slippage estimated by the EFCB
16 as a result of the delay in the Gouverneur
17 operating certificate. We still believe that
18 we will obtain relief from that and get that
19 \$700,000 and we don't believe that that is going
20 to be slippage.

21 The affiliation audit, we believe as
22 indicated in the letter, that we are well ahead
23 of the schedule in terms of what we have already
24 settled on affiliates to date and that we will
25 achieve at least 2.3 if not more. We simply

TRANSCRIPT OF MEETING OF BOARD OF DIRECTORS OF N.Y.C.
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disagree and we are presenting evidence to the Board on that \$3 million.

Now, the items that are outstanding where there is a difference of view and what we will ultimately receive are basically the SHF appeal. Down below, you will see that we think that the appeal that was filed on the 3rd of March will give us \$2.2 million. The estimate of the FFCH of course take the worst case zero.

The last decision re-computating the appeal which I understand has not been filed -- this is a matter of a Court opinion. We are not appealing the State but the Court. The difference there, and that is the largest single difference between the EFCH estimates and ours, the difference of 8.9 between 10.2 and 1.3. Obviously we are hopeful that we will get all or some portion of that restored.

The third item has to do with the MCB/Lincoln rate appeal. On this item as well as the original appeal of termination, dated August of '76 to March of '77, where we informally received rates, but we have no formal determination and backup. We are not, therefore, in a position to appeal

TRANSCRIPT OF MEETING OF BOARD OF DIRECTORS OF N.Y.C.
HEALTH AND HOSPITAL CORP. HELD MARCH 22, 1977

1 at this point. We will not be able to make the
2 decision on an appeal. I understand, until after
3 we receive that backup indicating the basis for
4 the State's rate determination. When we receive
5 it, then we can make a decision. Our expectation
6 is that we will appeal at least that portion
7 of both of these items -- the NCB/Lincoln rate
8 and the original overall corporate rate. Those
9 items are shown down below, the third to the last
10 and the next to the last items. We estimate
11 that out of the NCB/Lincoln rate, we will achieve
12 1.4 out of resubmission of the original appeal
13 perhaps 2.4 out of the 3.4 above for net loss
14 of one.
15

16 I know that this is all very confusing
17 and I apologize to those of you who are trying
18 to follow the amounts involved. I did want
19 to indicate that this is not an arbitrary de-
20 cision to show a range and that the City is
21 acting responsibly by earmarking us.

22 I think it is very important not to give
23 up these appeals, where the Corporation and the
24 City believe that we have a legitimate case, and
25 by revising the plan and admitting in effect

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2 or saying that we're not going to appeal any
3 further; putting the money in the plan from the
4 City, we would be in effect undermining our own
5 cases in the appeal items. At the same time we
6 have to assure the Board that the Corporation
7 will be able to operate through June and meet
8 all of its obligations regardless how these
9 particular appeals come out. That is the game
10 plan, if you will. We are trying to find
11 reasonable assurances from the Emergency Financial
12 Control Board that the Corporation will be
13 financially intact through the end of this
14 financial plan year; and at the same time,
15 protect our ability and our options to appeal
16 these rate determinations where we feel we have
17 a legitimate case. That is why we have this
18 range from 8.4 million to really 23.3 million
19 and of course we will fight and continue to
20 work to reduce th t 23.3 million, but I believe --

21 MR. MICHELSON: I don't follow the 26.3
22 and the 23.3.

23 MR. KUMMERFELD: You must have missed
24 my earlier explanation. Do you see the item
25 of the Gouverneur operating certificate up above,

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HEALTH AND HOSPITAL CORP. HELD MARCH 22, 1977 10

1 .7 and do you see the next item affiliation
2
3 audit 2.3? We simply disagree with the EFCB
4 that that is slippage. We are presenting them
5 evidence that we are going to obtain those
6 revenues. That is a flat disagreement with
7 them.

8 The other disagreement is really not a
9 disagreement. It's a question whether we will
10 get relief from those rate determinations, but
11 that 3 million we simply don't believe is a
12 fact that it's slippage.

13 So we say that the range is not 26.3, it's
14 23.3 to 8.4. If I misinformed you, I would
15 like the staff to correct me. At this time,
16 that is the over-view.

17 The letter, very briefly, in each of the
18 items presents a very brief reason why there
19 is a difference in view and what the status
20 of each of these items is. Many of you were
21 at the Special Committee meeting yesterday
22 where we discussed these items. If you were
23 not there and you have questions, I want you
24 to raise them now.

25 MR. MICHELSON: I just have one question.

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That 5 million on the union check --

MR. KUMMERFELD: That is not 5 million, that is a half a million.

MR. MICHELSON: I meant a half a million. Are those for settlements of accounts receivable in the past or is that projected income that you expect from those accounts that you have settled?

MR. ASKENAS: That is money we actually received in cash for accounts that have been settled. Any additional corrections would increase that money.

MR. MICHELSON: Then it does deal with collections of accounts receivable in the past, but you simultaneously also made a settlement which provided that wherever you did make a settlement you reached an agreement that in the future you will have collections. Did you make an estimate of that in terms of revenue?

MR. ASKENAS: That affects the Corporation and that is built in on a recurring basis as a one-time cash allotment.

MR. KUMMERFELD: Let me call your attention to the first item under New Problems which relates to a resolution to be formally considered a little

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3 later. This is the additional cost to the
4 Corporation resulting from the fact that Sydenham
5 is not now projected or anticipated to close.
6 Had Sydenham closed on April 1st which was one
7 of the two contingencies in the plan, as you
8 remember, there would have been savings in the
9 last two months of 1.7 million that is consistent
10 with the resolution on Sydenham.

11 DR. HOLLOMAN: I move the adoption of the
12 resolution.

13 MR. BENSLEY: I second it.

14 THE CHAIRMAN: Any discussion on it?

15 MR. MICHELSON: What are we acting on?

16 MR. KUMMERFELD: The adoption of the sub-
17 mission.

18 THE CHAIRMAN: Is there any discussion?

19 MR. KIRCHMAN: This is an answer to Steven
20 Berger's letter to extent the period to submit
21 the plan to the EFCB to March the 22nd. That
22 is the last day that we can pass on it.

23 MR. KUMMERFELD: That is why it was
24 necessary to have a special meeting.

25 MR. SMITH: Does your resolution encompass
 the promise of the City to make us hold, how do

1 TRANSCRIPT OF MEETING OF BOARD OF DIRECTORS OF N.Y.C3
2 HEALTH AND HOSPITAL CORP. HELD MARCH 22, 1977

2 we do that? How does that get into it?

3 MR. KUMMERFELD: I think the City, since
4 the resolution addressed, as you recall on
5 February 27th, the resolution resolved that the
6 appropriate City officials and appropriate
7 officers and directors of HHC are directed to
8 submit. I think they have linked us together
9 and therefore I don't think it's required formally
10 that the HHC indicate how much money the City
11 is putting in. Obviously the City will have
12 to do that.

13 MR. SMITH: Where is that in the resolution?

14 MR. KUMMERFELD: In which resolution?

15 MR. SMITH: In whatever motion we are
16 passing.

17 THE CHAIRMAN: The motion is on the letter
18 and the data as outlined.

19 DR. HOLLOMAN: The \$23 million deficit.

20 MR. SMITH: I'm not objecting. I'm wonder-
21 ing how we can get on the record some reassurances
22 that the gap we are talking about will get
23 covered.

24 DR. HOLLOMAN: We recognize that very wise
25 and astute observation.

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HEALTH AND HOSPITAL CORP. HELD MARCH 22, 1977 14

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2 MR. KIRCHMAN: Could we pass a resolution
3 saying that the City is going to back us up?

4 MR. KUMMERFELD: You can pass any resolu-
5 tion you want, but it has no force of law with
6 regard to the City.

7 It's a little complicated. If you want
8 to pass that, you would have to put a lot of ifs,
9 ands and buts and my advice to you is to stay
10 out of that. The City obviously is going to
11 make that a contingent commitment because of
12 these last claims. We're not going to say here
13 is \$23 million.

14 MR. SMITH: But you have told us that the
15 City will cover up to \$23 million?

16 MR. KIRCHMAN: I move the adoption of the
17 resolution.

18 THE CHAIRMAN: I call the question. All
19 those in favor of the resolution signify by
20 raising your hand.

21 MR. KELKANES: Unanimous, ten.

22 THE CHAIRMAN: The vote is unanimously
23 in favor of the resolution.

24 MR. KELKANES: There is one additional
25 item that is implicit to the adoption of the plan

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and that is the resolution relating to Sydenham Hospital. If one of the Board members will please move that.

MRS. GOLDSTEIN: So moved.

THE CHAIRMAN: Any seconds? All those in favor of the second resolution signify by raising your hand.

MR. KELKANES: Eight.

THE CHAIRMAN: Dr. Padilla, are you voting for it?

DR. PADILLA: Yes, I moved it.

MRS. GOLDSTEIN: I moved it.

MR. KELKANES: There are two abstentions -- Dr. Holloman and Mr. Kirchman.

DR. HOLLOMAN: I want to state that I am delighted that the Corporation is moving in favor of Sydenham Hospital, which is an institution that I have supported consistently since I've been here. However, I do feel that it is a move against the community with a great health need to abruptly terminate ambulance service with Logan. That is the reason I am abstaining my vote.

MR. BENSLEY: I only want to point out

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HEALTH AND HOSPITAL CORP. HELD MARCH 22, 1977 16

1 one thing. I think the affidavit is excellent.

2 I think the members of the Board agree that the
3 affidavit is -- and I think it could be read

4 and I believe that each member of the Board might
5 have further suggestions. This is the critical
6 point, that \$13 million up in step 1, 2 and 3.

7 I also want to amend those who had the material
8 with respect to the Goldwater Hospital. I think
9 that it is on page 9 and 10. I think that some-
10 thing should be said in a supplemental affidavit.
11 I address myself now to counsel.

12 I don't think enough is being said about
13 Goldwater Hospital and the services it's rendering
14 and its significance. I think that it is the
15 one hospital in the municipal system that makes
16 such a tremendous contribution, not only here
17 in New York City but in methods that are used
18 in the entire United States.

19 I would like to see a few sentences to
20 that effect in this affidavit or in a supplement.
21 It bears (a) on the issue of reimbursement which
22 is terribly important and (b) it's possible, and
23 you and I, George, have discussed this in the
24 past, it might make sense at this point to chat
25

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1
2 with some of the other municipal systems in
3 the State of New York. I don't know if you have
4 had an opportunity to do so, and see in what
5 manner they would want to come in to this case
6 as a class action; because I believe frankly
7 that there is more at stake than the action of
8 our just recovering our 10 or 13 million dollars.
9 I feel very strongly that we are going to recover
10 that amount.

11 In addition, there is a position, both
12 economically and philosophically, that this
13 municipal hospital system should be taking,
14 it should be taken in this action and it should
15 be pressed forward even if we have to go to the
16 highest court in the land. I think it would
17 be most worthwhile if we could arrange a meeting
18 with some of the heads of the other municipal
19 hospital city systems to sit down and talk with
20 them and have them join with us in this very
21 worthwhile thing.

22 I think that this is more than just an
23 action and the lack of information in the affidavit
24 with respect to the splendid work that is being
25 done at Goldwater and of course other hospitals,

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2 but particularly where, I think isn't demonstrated
3 before the Court.

4 MR. KELKANES: There are two elements.
5 First of all, this is the third affidavit that
6 was submitted. On previous affidavits, we
7 described the Corporation more fully and exactly
8 in the nature of services as well as in the
9 pleadings. I will take up with special counsel
10 the matter and discuss it with them -- the filing
11 of a supplemental affidavit to reflect some of
12 the additional levels of work that we carry at
13 Goldwater and their being excluded from these
14 rate computations.

15 MR. MICHELSON: I'm just trying to get
16 myself oriented. This exhibit is merely an
17 affidavit of the HHC in an action that we join
18 the Hospital Association?

19 MR. KELKANES: That is correct. It is
20 further in the matter in which we are seeking
21 before the Court on a re-computation. It sets
22 forth very precisely the reason why that we
23 distributed this particular affidavit. It sets
24 forth all of the elements in which we feel the
25 State has acted wrongfully in the manner in

TRANSCRIPT OF MEETING OF BOARD OF DIRECTORS OF N.Y.C.
HEALTH AND HOSPITAL CORP. HELD MARCH 22, 1977 19

1 which it has re-computed our rates. It very
2 articulately sets forth all of these issues.
3 We felt it would be worthwhile for all the Board
4 members to peruse it.
5

6 MR. KIRCHMAN: In connection with Coler
7 and Goldwater, very thorough studies have been
8 made dealing with the chronic disease performance
9 at both these hospitals and justifies their
10 classification as chronic diseases hospitals.
11 I think that the Rosemann firm that is representing
12 us consults us, they would get some additional
13 information reflecting what you are looking at,
14 Mr. Chairman.

15 DR. HOLLOMAN: On behalf of the Corporation,
16 I have had an opportunity to visit probably the
17 largest chronic disease hospital in the country
18 fairly recently. That is the Makuna Honda
19 (phonetically) in San Francisco. Although this
20 enjoys a rather sterling reputation, I think
21 that the services that the Health & Hospitals
22 Corporation is rendering at these chronic disease
23 institutions, particularly at Goldwater, is
24 outstanding. I would say further that the
25 Corporation has recently moved at the insistence

1 TRANSCRIPT OF MEETING OF BOARD OF DIRECTORS OF N.Y.G.O
2 HEALTH AND HOSPITAL CORP. HELD MARCH 22, 1977

3 of some of the trustees, in spite of the inadequate
4 financing, to improve the situation in our chronic
5 disease institutions.

6 I should further point out that one of
7 the problems has been that at one point in the
8 not too distant past, the City of New York was
9 quite anxious to get out of the chronic disease
10 business and had at one time recommended the
11 closing of one or both of those institutions
12 on Roosevelt Island.

13 In spite of that, because of the policy
14 determination on the part of this Board is to
15 be commended, and because the patients have no
16 alternative for care, the Board has insisted
17 that we continue to do this. We have also done
18 so at the request of the State and we do urge
19 that we fight as hard as we can for adequate
20 reimbursements so that we can provide a decent
21 level of care to so many who have no alternative
22 and since the patients, in the most part, are
23 patients who have been rejected by other long-
24 term care facilities.

25 THE CHAIRMAN: Any other comments?

 MRS. GOLDSTEIN: I have a question, George,

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2 HEALTH AND HOSPITAL CORP. HELD MARCH 22, 1977

3 this affidavit is part of the other case, the
4 case of the discrimination exhibited to the
5 Corporation in the Blue Cross services?

6 MR. KELKANES: That is a separate action.
7 That is a whole separate transaction. This is
8 on the Medicaid regulations -- party six regula-
9 tions.

10 MR. KIRCHMAN: You want us to pass on this,
11 Charlie?

12 MR. BENSLEY: I thought it was worth the
13 Board's three or four minutes of time so that
14 both counsel and the members of the Board could
15 hear this.

16 THE CHAIRMAN: Are there any other items?

17 MR. BENSLEY: Frankly, before we close the
18 meeting, I think we are being gypped on a few
19 items. I think Mrs. Goldstein is doing a good
20 job and some of the others who are going down
21 to Washington because what our president said,
22 I think Goldwater should be compensable in much
23 larger terms than at Washington. I think this
24 is the right time that we ought to be doing some-
25 thing about it.

DR. HOLLOMAN: May I make a comment and

TRANSCRIPT OF MEETING OF BOARD OF DIRECTORS OF N.Y.G.
HEALTH AND HOSPITAL CORP. HELD MARCH 22, 1977

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2 add to that. It emphasizes a situation that we
3 do have. Our Medicaid rates for nurses' facilities
4 are still set as a function of the State Department
5 of Health. The federal contributions to
6 that Medicaid rate up until now have flowed
7 without any interruptions. It is interesting
8 to note also that as of today we are out in front
9 of the national administration in reducing Medicaid
10 rates in general and our institutions would be
11 affected.

12 In our fight to have justice for our
13 institutions, that should be noted.

14 MRS. GOLDSTEIN: I would like to add that
15 I have had occasion recently to visit both
16 Coler and Goldwater. I would like the Board
17 to vote a letter of appreciation to Mr. Frank
18 DeSeppio (phonetically) for the outstanding job
19 that he is doing at Goldwater. I think anyone
20 who has been to Goldwater -- it's certainly
21 impressive with the changed atmosphere and the
22 whole tone of the facility.

23 I intend to write a personal note to him.
24 I think as a Board, we should recognize the out-
25 standing job that Mr. DeSeppio has done.

TRANSCRIPT OF MEETING OF BOARD OF DIRECTORS OF N.Y.C.
HEALTH AND HOSPITAL CORP. HELD MARCH 22, 1977 23

1

2

THE CHAIRMAN: Do you want to put that
into a form of a motion?

3

4

MRS. GOLDSTEIN: I move that the Board --

5

THE CHAIRMAN: Second?

6

DR. PADILLA: I second it.

7

THE CHAIRMAN: Any discussion?

8

MR. KIRCHMAN: Who is the director of
Coler Hospital and why are we excluding him?

9

10

MRS. GOLDSTEIN: If you would visit both,
you would know why.

11

12

MR. KIRCHMAN: I know both Coler and
Goldwater Hospitals and I have been to them a
number of times, but I'm not familiar with the
administrators and therefore I would not exclude
one executive director. I would like to know
more about what is going on before we pass on
such a resolution.

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We also have Mr. Weinstein here from
Bellevue and I would like to add Mr. Weinstein
as having done a sterling job and I would like
to add him.

23

24

25

MRS. GOLDSTEIN: You know, we talk about
incentives to staff and one of the simplest in-
centives is thanking somebody for doing a good job.

TRANSCRIPT OF MEETING OF BOARD OF DIRECTORS OF N.Y.C.
HEALTH AND HOSPITAL CORP. HELD MARCH 22, 1977 24

1 I have occasion to want to make this recommenda-
2 tion and if the Board doesn't want to act on it,
3 I will do it personally.
4

5 MR. BENSLEY: Why don't you write a letter
6 and some of us will go visit.

7 MRS. GOLDSTEIN: I would strongly recommend
8 that every Board member visit some of the
9 hospitals.

10 DR. PADILLA: Point of order. I seconded
11 the motion for the purpose of discussion. I
12 think it is inappropriate for us as a Board to
13 take such an action regarding the merits of the
14 case. The executive directors are members of
15 the staff of the Health & Hospitals Corporation
16 and the chief administrative officer of the
17 Corporation should make such recognition.

18 MR. SMITH: I agree with that. I suggest
19 that this matter be tabled.

20 MR. KIRCHMAN: This is without prejudice
21 to Mr. DeSeppio.

22 DR. PADILLA: That is without prejudice
23 to Mr. DeSeppio or any other director.

24 THE CHAIRMAN: The motion is tabled. That
25 is non-debatable. All those in favor of tabling

TRANSCRIPT OF MEETING OF BOARD OF DIRECTORS OF N.Y.C.
HEALTH AND HOSPITAL CORP. HELD MARCH 22, 1977 25

1

2

this motion signify by raising your hand.

3

MR. KELKANES: Nine.

4

MR. BENSLEY: May I tell him informally

5

about the things that I heard said here?

6

THE CHAIRMAN: We can't stop you from

7

talking.

8

MR. KELKANES: The vote is nine for tabling

9

and one opposed.

10

THE CHAIRMAN: Is there a motion to adjourn --

11

all in favor -- carried.

12

13

ooo

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TRANSCRIPT OF MEETING OF BOARD OF DIRECTORS OF N.Y.C.
HEALTH AND HOSPITAL CORP. HELD MARCH 22, 1977 26

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2

3

STATE OF NEW YORK)

4

COUNTY OF ROCKLAND)

ss.

5

6

7

8

I, HILDA FINER, a Shorthand Reporter and
Notary Public within and for the State of New
York, do hereby certify:

9

10

11

That the within is a true and accurate
transcript of the proceedings taken on the 22nd
day of March, 1977.

12

13

14

15

I further certify that I am not related
to any of the parties to this action by blood
or marriage and that I am in no way interested
in the outcome of this matter.

16

17

IN WITNESS WHEREOF, I have hereunto set
my hand this 28 day of Mar, 1977.

18

19

20

21

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23

24

25

Hilda Finer
Hilda Finer

MEMORANDUM AND ORDER OF OWEN, J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ARTHUR C. LOGAN MEMORIAL HOSPITAL,
Plaintiff,

77 Civ. 1216

-against-

MEMORANDUM

AND

ORDER

PHILIP L. TOIA, as Commissioner of Social Services of the State of New York, ROBERT P. WHALEN, as Commissioner of Health of the State of New York, HUGH L. CAREY, as Governor of the State of New York, JOSEPH A. CALIFANO, Secretary of the U.S. Department of Health, Education, and Welfare, ABRAHAM D. BEAME, as Mayor of the City of New York, HARRISON J. GOLDIN, Comptroller of the City of New York, and DONALD KUMMERFELD, as Director of the Budget of the City of New York, and as pro tem Administrator of the Health and Hospitals Corporation,

Defendants.

OWEN, District Judge

On April 21, 1977, I granted a preliminary injunction, enjoining the various City defendants and the New York City Health and Hospitals Corporation [Health and Hospitals Corp.], its officers, directors and employees, from discontinuing or in any way interfering with the emergency ambulance feeder service agreement that has been in effect between the Arthur C. Logan Memorial Hospital [Logan] and the Health and Hospitals Corp. Pursuant to a resolution passed by the Board of Directors

80a
MEMORANDUM AND ORDER OF OWEN, J.

(1)

of the Health and Hospitals Corp. on March 22, 1977,
which Logan alleges was passed to benefit the underutilized
Sydenham Municipal Hospital, which had previously been sche-
duled for closure, that service agreement was to have been
(2)
terminated.

(1)

"WHEREAS, on January 12, 1977 the Board of Directors
adopted the Financial Plan for Fiscal Years 1977 and 1978; and

"WHEREAS, said plan provided for the termination of in-
patient services at Sydenham Hospital, and the administrative
and professional merger of Sydenham with Harlem Hospital by
April 1, 1977, subject to a determination as to the future
of Arthur C. Logan Memorial Hospital; and

"WHEREAS, the continued operation of Arthur C. Logan
Memorial Hospital is seriously in question at this time given
the adverse financial condition of that institution, and the
fact that it has reportedly filed a Chapter XI bankruptcy
proceeding; and

"WHEREAS, the foregoing questions relating to Logan Hospital
preclude a determination as to the potential utilization of
Sydenham Hospital; now, therefore, be it

"RESOLVED that the Three-Year Financial Plan relating to
Sydenham Hospital be revised to provide for the continued
operation of Sydenham Hospital; and be it further

"RESOLVED that the Corporation's present agreements with
regard to providing a subsidy for ambulance services at Logan
Hospital be terminated, and that the Corporation shall under-
take to provide such services to the ambulance district
covered by such agreements."

(2)

At midnight of March 31, a week after I signed a temporary
restraining order in this case, agents of the Health and Hos-
pitals Corp. attempted to remove the City-owned radios from
Logan's ambulances. Cooler heads appear to have prevailed;
the radios remained. Corporation Counsel admitted the attempt
was a "mistake."

MEMORANDUM AND ORDER OF OWEN, J.

At that hearing, I made some preliminary findings of fact and conclusions of law. I now expand on those findings and conclusions.

The well-established standard for the issuance of a preliminary injunction is whether there has been "a clear showing of either (1) probable success on the merits and possible irreparable injury, or (2) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly towards the party requesting the preliminary relief." Sonesta Int'l Hotels Corp. v. Wellington Associates, 483 F.2d 247, 250 (2d Cir. 1973)(emphasis in original).

Approximately 32% of Logan's patient population are admitted pursuant to the ambulance service. The cutting-off of the service and the resulting cut-off of patients, given Logan's present financial condition, ⁽³⁾ would effectively destroy the hospital. I, therefore, find irreparable injury. On the other hand, the Health and Hospitals Corp. has shown no hardship that it would suffer from Logan's continuation in the emergency ambulance feeder service. There is no allegation that Logan is not adequately performing its duties under the contract. On the contrary, there is proof that the community would suffer if the ambulance feeder service to Logan is discontinued, since the only hospital in close proximity to Logan is Sydenham Municipal Hospital, which

(3) Logan is presently debtor-in-possession under Chapter XI of the Bankruptcy Act.

MEMORANDUM AND ORDER OF OWEN, J.

(4)

admittedly does not have an ambulance ramp.

Together with their order to show cause, Logan submitted two newspaper articles by Ronald Sullivan which appeared in the New York Times on March 10, 1977 and March 29, 1977, respectively. In the first article, Mr. Sullivan described alleged efforts by the Health and Hospitals Corp. to close Logan in order to save the underutilized Sydenham by cutting-off Logan's emergency ambulance feeder service. (5) He quotes a Health and Hospitals Corp. official as saying, "If they can't get any patients, then they can't get any money and they'll have to close."

The second article quotes Dr. John L. S. Holloman, Jr., the outgoing president of the Health and Hospitals Corp., as saying that he did not vote for the resolution because "he did not 'want to stick a knife in Logan's back.'"

After the initial, April 14 hearing on the preliminary injunction, (6) I granted an additional one week to Corporation Counsel to rebut these allegations. However, on the 21st, all

(4)

An official at Sydenham is alleged to have said that the lack of a ramp is not a problem. "We'll carry the patients in one way or another." New York Times article of March 10, 1977 by Ronald Sullivan. See infra.

(5)

The complaint in this case also alleges (as do the Sullivan articles) that the City defendants have wrongfully withheld Medicare and Medicaid reimbursement monies owed to Logan in order to force the hospital to close.

(6)

This hearing had originally been scheduled for March 31, 1977 and was adjourned for two weeks at Corporation Counsel's request to enable him to prepare.

MEMORANDUM AND ORDER OF OWEN, J.

that was offered was a hearsay affidavit of George Kalkines, Secretary and General Counsel of the Health and Hospitals Corp., that he had called seven members of the Board who "uniformly denied any attempt whatever to force the closure of Logan Hospital through their adoption of the resolution to continue the operation of Sydenham Hospital and to terminate the subsidy for ambulance services to Logan." There were no affidavits of the Board members themselves or even a statement of the exact questions asked them and their individual answers. (7) Nor was there any affidavit of any Corporation official denying the reported statements.

There was no affidavit of Dr. Holloman, refuting the quote attributed to him by Sullivan. In the transcript of the meeting submitted by Corporation Counsel, however, the only discussion of the resolution was Dr. Holloman's, in which he stated:

I want to state that I am delighted that the Corporation is moving in favor of Sydenham Hospital, which is an institution that I have supported consistently since I've been here. However, I do feel that it is a move against the community with a great health need to abruptly terminate ambulance service with Logan. That is the reason I am abstaining my vote.

This statement supports the accuracy of the reporting in Mr. Sullivan's articles. And given the Health and Hospitals Corp.'s failure to, in any way, rebut the allegations, I

(7)

The affidavit speaks of the Board's action on February 10, 1977. The transcript of the Special Board of Directors' meeting is dated March 22, 1977. Corporation Counsel had no explanation for this discrepancy.

MEMORANDUM AND ORDER OF OWEN, J.

accept these articles as reliable for the purposes of this motion.

In the affidavit of William O. Allen, Executive Director of Logan and sworn to on March 24, 1977, he states:

8. Defendants, through the General Counsel for the Health and Hospitals Corp. of the City of New York, have now advised the Hospital's representatives and attorneys of their intention to unilaterally cancel the emergency ambulance service agreement in effect between the parties in an effort to strangle and constrict the flow of patients into plaintiff's hospital. (Emphasis added).

Mr. Kalkines, the General Counsel, submitted two affidavits on this motion subsequent to the Allen affidavit. In neither did he deny, or even address, Mr. Allen's statement. For the purposes of this motion, at least, I credit Mr. Allen.

Finally, from the face of the resolution itself, it appears that there is no logical connection between Logan's precarious financial condition and the ambulance service. The "subsidy" for the ambulance feeder service, of which the resolution speaks, does not appear to be a subsidy at all, but payment for services rendered by hospitals such as Logan in providing ambulances which respond to calls originally placed to the police emergency 911 number. The ambulances belong to the hospitals; it is the radios that connect into the system which belong to the City.

Even if Logan goes into bankruptcy, the City will not lose any money because they had continued the ambulance feeder service until that time. They do not pay Logan in advance for operating the ambulances, as far as I am informed.

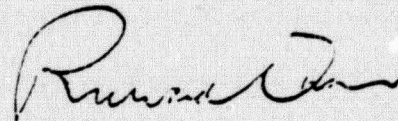
MEMORANDUM AND ORDER OF OWEN, J.

Given this lack of connection between the ambulance feeder service and Logan's financial condition, the assertion of that financial condition as the reason for terminating the feeder service, I find, is likely a sham.

For the foregoing reasons, together with those enunciated from the Bench on April 21, I find that Logan has met its burden of showing "sufficiently serious questions going to the merits to make them a fair ground for litigation."

The foregoing constitutes my findings of fact and conclusions of law. Submit order on notice by May 6, 1977.

May 2, 1977

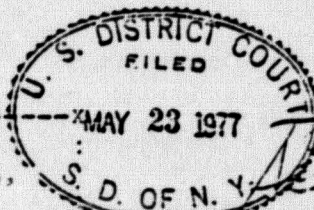


United States District Judge

PRELIMINARY INJUNCTION AND ORDER APPEALED FROM

418

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



ARTHUR C. LOGAN MEMORIAL HOSPITAL,

Plaintiff,

Div. 1216

-against-

PRELIMINARY INJUNCTION
AND ORDER

PHILIP L. TOIA, as Commissioner of
Social Services of the State of
New York, ROBERT P. WHALEN, as
Commissioner of Health of the State
of New York, HUGH L. CAREY, as
Governor of the State of New York,
JOSEPH A. CALIFANO, Secretary of the
U.S. Department of Health, Education
and Welfare, ABRAHAM D. BEAME, as
Mayor of the City of New York,
HARRISON J. GOLDIN, Comptroller of
the City of New York, and DONALD
KUMMERFELD, as Director of the
Budget of the City of New York, and
as pro tem Administrator of the
Health and Hospitals Corporation,

Defendants.

OWEN, District Judge

Plaintiff's motion for a preliminary injunction having duly come on to be heard before this Court on April 14, 1977 and April 21, 1977 pursuant to an order to show cause dated March 24, 1977, under which the defendants were temporarily restrained from committing any act to discontinue the emergency

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PRELIMINARY INJUNCTION AND ORDER APPEALED FROM

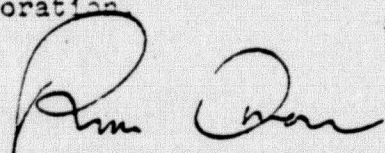
feeder service agreement then in effect between the parties.

NOW, upon all the proceedings and hearings held herein, and in conformity with my opinion of May 2, 1977 setting forth my findings of fact and conclusions of law, it is hereby

ORDERED that plaintiff's motion for a preliminary injunction as to defendants Beame, Goldin, Kummerfeld and members of the Board of Directors of the Health and Hospitals Corporation (the New York City defendants) be and the same hereby is granted; and it is further

ORDERED that said New York City defendants, their attorneys, agents, servants, employees and their successors in office, and all other persons in active concert or participation with them, are enjoined pending determination of the underlying action from committing any act to discontinue the emergency ambulance feeder service agreement presently in effect between plaintiff and the New York City Health and Hospitals Corporation.

Dated: New York, New York
May 20, 1977.


Richard Owen, U.S.D.J.

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ARTHUR W. LOGAN MEMORIAL
HOSPITAL,

-against-

PHILIP L. TOIA, as Commissioner
of Social Services of the State
of New York, ROBERT P. WHALEN, as
Commissioner of Health of the
State of New York, JOSEPH A.
CALIFANO, Secretary of the U.S.
Department of Health, Education
and Welfare, ABRAHAM D. BEAME, as
Mayor of the City of New York,
HARRISON J. GOLDIN, Comptroller
of the City of New York, and
DONALD KUMMERFELD, as Director of
the Budget of the City of New
York, and as pro tem Administrator
of the Health and Hospitals
Corporation.

NOTICE OF APPEAL

77 Civ. 1316

(P.D.)

Defendants. :

S I R S :

Notice is hereby given that the New York
defendants hereby appeal to the United States Court of
Appeals for the Second Circuit, from the order entered
herein on May 23, 1977, which granted plaintiff's motion
for a preliminary injunction as to defendants, Beame,
Goldin, Kummerfeld, and members of the Board of Directors
of the Health and Hospitals Corporation and that these
defendants are enjoined pending determination of the under-
lying action from committing any act to discontinue the
emergency ambulance feeder service agreement presently

NOTICE OF APPEAL

in effect between plaintiff and the New York City Health and Hospitals Corporation, and this appeal is taken from each and every part of said order as well as from the whole thereof.

Yours, etc.,

W. BERNARD RICHLAND
Corporation Counsel of
THE CITY OF NEW YORK
Attorney for Defendants,
BEAME, GOLDIN, KUMMERFELD
and members of the Board
of Directors of The Health
and Hospitals Corporation
Office & P.O. Address:
Municipal Building
New York, NY 10007

By Stuart Adler

STUART ADLER

Dated: New York, NY

May 24, 1977

NOTICE OF APPEAL

TO: MELLYN DOUGLAS HAYWOOD, ESQ.
Attorney for Plaintiff
500-Fifth Avenue
New York, NY 10036

ROBERT B. FISKE JR., ESQ.,
U. S. Attorneys Office
Attorney for JOSEPH CALIFANO,
Secretary of the U. S.
Department of Health,
Education and Welfare
WILLIAM HIBSHER, Of Counsel
1 St. Andrews Plaza
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LOUIS J. LEFKOWITZ, ESQ.
Attorney General of the
State of New York
Attorney for PHILIP L. TOIA,
as Commissioner of Social
Services of New York State
ROBERT P. WHALEN, as
Commissioner of Health of
the State of New York and
HUGH L. CAREY, as Governor
of The State of New York
DAVID BIRCH, Of Counsel
2 World Trade Center
New York, NY 10007

TRANSCRIPT OF PROCEEDING DATED APRIL 14, 1977

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

ARTHUR C. LOGAN MEMORIAL
HOSPITAL,

Plaintiff,

-against-

PHILIP L. TOIA, et al.,

Defendants.

77 Civ. 1216

BEFORE:

HON. RICHARD OWEN,

DISTRICT JUDGE

New York, New York

April 14, 1977 - 10:00 a.m.

APPEARANCES:

MELVYN DOUGLAS HAYWOODE, ESQ.,
Attorney for Plaintiff

ROBERT B. FISKE, JR., ESQ.,
Attorney for HEW

BY: WILLIAM HIBSHER, ESQ.,

MARGE SILVER, ESQ.,

Assistant U.S. Attorneys

W. BERNARD RICHLAND, ESQ.,
Corporation Counsel for the City of New York

BY: MILTON WEINBERG, ESQ.,
Of Counsel.

LOUIS J. LEFKOWITZ, ESQ.,
Attorney General State of New York

BY: DAVID BIRCH, ESQ.,
Of Counsel.

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2 (Case called.)

3 MR. HAYWOODE: May it please your Honor,
4 this matter comes before the Court asking for a temporary
5 restraining order against the City of New York, the
6 Health and Hospitals Corporation, particularly, and the
7 other defendants who are named in the complaint, the
8 Department of Health, Education and Welfare and the
9 Commissioner of Health, and the Governor of the State of
10 New York, and others, and the injunction is sought --

11 THE COURT: How many have you served?

12 MR. HAYWOODE: As far as I know, every party
13 defendant listed here has been served with a copy of
14 the order to show cause, and several have been served
15 with the complaint, the underlying complaint, by
16 the United States Marshal.

17 THE COURT: All right.

18 MR. HAYWOODE: The substance of the complaint,
19 the Arthur C. Logan Memorial Hospital, which is a
20 hospital which has been operated for the last 115 years
21 up on Convent Avenue by the City -- by CCNY, the City
22 University of New York -- its complaint is that over the
23 last several months to a year, that the City, through
24 several of its component departments, have engaged in
25 a course of action whose results could only be the forced

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2 termination and closure of the Arthur Logan Hospital,
3 formerly known as Knickerbocker Hospital.

4 In the body of the complaint, the plaintiff set
5 forth a sequence of actions taken by the City, primarily.

6 Your Honor is aware, I know, from previous
7 litigation before this Court, and before other judges
8 of the District Court, that the City of New York acts
9 as an agent in administering a so-called plan for the State
10 in effecting payment of Medicaid funds which ultimately
11 are provided by the Federal Government.

12 The Federal Government provides outright 50 per
13 cent of these funds to pay for the medical support of
14 persons who are indigent and who qualify under the Social
15 Service Act for such assistance.

16 The City of New York contributes 25 per cent of
17 those funds and the State contributes a matching 25
18 per cent.

19 The problems of the Arthur C. Logan Hospital
20 as a voluntary institution of the City of New York aren't
21 unlike the problems faced by other voluntaries, indeed,
22 all of the hospitals are experiencing monetary difficulties.
23 In the last several days, newspapers have contained
24 accounts of difficulties by Roosevelt Hospital, and
25 all hospitals are in a similar money bind.

TRANSCRIPT OF PROCEEDING DATED APRIL 14, 1977

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2 The difficulties result in a large part from
3 the low level of reimbursement --

4 THE COURT: Mr. Haywoode, could you move over
5 here, please.

6 MR. HAYWOODE: With the low level of reimbursement,
7 it has been a traditional and chronic problem that all
8 hospitals are receiving less than their reasonable costs
9 for providing these services to that indigent segment
10 of the population which is treated by them.

11 Though the Social Service Law requires that
12 reimbursement under the Medicaid Act provide for the
13 reasonable cost of the treatment, the State has concocted
14 a formula, which I cannot go into now because of its
15 intricacy, but I believe your Honor is aware of the
16 formulas and the way that the reimbursement rates are
17 determined --

18 THE COURT: I am not, but I will accept your
19 statement it is intricate for present purposes.

20 MR. HAYWOODE: Fine. That relieves me of the
21 burden of trying to explain it -- I don't think I could.

22 But the result is that reimbursement rates seem
23 to be arbitrarily applied to different hospitals, and
24 there are groupings of ten hospitals for some purposes
25 under the State's plan for reimbursements in determining

1
2 how much each hospital should get, and there are other
3 formulas and whatnot, but the result over the last year,
4 and certainly with the new reimbursement rates, your
5 Honor, that the State has issued, is to create a situation
6 where most of the voluntary hospitals, and particularly
7 the Logan Hospital, is having its reimbursement rate
8 further reduced to compound the economic problems that
9 it already has, while most of the hospitals, which are
10 the so-called municipal hospitals, which are owned by
11 the City of New York -- there are 17 of them -- have
12 their rates increased.

13 The particulars of that I don't want to go
14 into now for purposes of briefness.

15 We have conducted several negotiating sessions,
16 both with the Mayor of the City of New York and the defendant
17 Mr. Kummerfeld, who is the Budget Director of the City of
18 New York -- we have dealt with Commissioner Whalen
19 on occasion, and I must hasten to say that outside of
20 the question of the accuracy or adequacy of the rate of
21 reimbursement, which is set by the State, in accordance
22 with the Corporation Counsel brief, we have no quarrel
23 pretty much with the State authorities insofar as that
24 most of the acts that are complained of in the complaint
25 seem to be the acts -- seem to be acts emanating

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2 from the City, from the City's authorities.

3 To some extent the Comptroller's Office is not
4 necessarily a part of that, but more on that later,
5 if the Court please.

6 What has happened now, and what has moved the
7 hospital to come into this court and seek the restraining
8 order, and the rest of the permanent injunction after
9 evidentiary hearing that is mentioned in this matter, is
10 that the Health and Hospitals Corporation had decided
11 earlier this year to close one of its hospitals, the
12 so-called Sydenham Hospital, which is in the area of the
13 West Harlem community, which pretty much covers much of
14 the area that the Arthur Logan Hospital also services.

15 Our quarrel as such is not necessarily with the
16 Sydenham Hospital -- you know, we have no problem with
17 it. It has its own problems. From our analyses, the
18 problems of the Sydenham Hospital are extremely more
19 severe than any problem that Logan or Roosevelt or any
20 other voluntary hospital presently has.

21 If I can paraphrase it, one problem with the
22 Sydenham Hospital is that its beds aren't properly utilized;
23 its utilization rate runs well-- runs approximately
24 68 per cent, as the complaint shows; the accepted
25 utilization rates for hospitals, particularly here in

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the City, but nationwide, is at 80 per cent.

Any hospital running a utilization rate lower than that really ought to close. That situation must be juxtaposed with the situation that the utilization rate at the Arthur Logan Hospital has continuously run at 95 per cent and for the last several months pretty close to 100 per cent, which is to say that in terms of the use being made by members of the community of the Arthur Logan facilities, under the so-called freedom of choice principle, because under the Medicaid Act one of the hallmarks of that Act was that recipients of Medicaid assistance, through Federal and other funds, must have freedom of choice to go to the hospital that they choose.

This is to do away with a situation where persons of limited means are herded to City institutions, and things of that kind, where perhaps a second class kind of treatment would take place.

But under freedom of choice, Arthur Logan has been the choice of those persons who are treated under the Medicaid Act. Our reimbursement rates are high. Our efficiency -- once again, under the Medicaid Act reimbursement rates are supposed to reward superior efficiency in hospital operations.

No one could question that the efficiency under

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2 which the Logan Hospital operates -- most of the other
3 voluntary hospitals for that matter -- is superior to the
4 kinds of economic efficiency which one finds in the
5 City institutions, and particularly, using for comparison,
6 because of its relevance to this case, in Sydenham
7 Hospital.

8 Sydenham Hospital has cut its number of beds
9 so that if we were to suggest that its utilization rate
10 was at 68 per cent, we would have to realize that they
11 have cut some 35 per cent of their total bed complement
12 and the 68 per cent utilization is really 68 per cent
13 of the lower figure, of the 65 per cent.

14 In the face of that problem -- this is just the
15 summary problem -- the City has apparently operated, as
16 is my interpretation of what they have done -- the City
17 has said that, "We are going to maintain our own 17
18 hospitals in our own system, even if we have to subsidize,"
19 and it must be a subsidy, because the hospitals don't
20 carry themselves, there is no question about that.

21 Behind all these occurrences is the fact that
22 the Congress is currently considering, and the Congress
23 has indicated in many ways, that it is on the verge,
24 sometime over the next many months -- certainly within
25 the next year and a half or two years, of passing a

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national health insurance program which would probably relieve and do away with the dire situation that most of the hospitals operating, both the City hospitals and the voluntary hospitals, find themselves under presently and for the last year and a half.

In the face of that possibility members of the Logan Hospital have been personally told, and particularly by Mr. Kummerfeld, the City's Budget Director, and by the Deputy Mayor, Mr. Gibson, that the City sees a primary obligation being owed to its own municipal hospital system, that the City must opt in such a way -- this is all subject to evidentiary data that we are prepared to produce in this court -- the City in some way must, and this is my phrase, tilt the process, so as to protect its own hospitals as opposed to the voluntary hospitals and when confronted most recently, in January 18th, Mr. Kummerfeld and Mr. Gibson of the Mayor's office, Deputy Mayor and the Mayor's Budget Director, and Mayor Beame, when confronted with the hospital's plight, and the fact that the hospital is in this economic plight, we were told by the City's Budget Director that, well, we may simply do nothing and we may allow you to continue down the road.

The Logan Hospital has filed a petition in Chapter XI, under Chapter XI of the Bankruptcy Act for

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Reorganization, but we were told that we may just let you sit there, and we may do nothing about your problems, in the hope that maybe you will just go away, or something like that.

This is my paraphrasing. The obvious intent of the City officials was that in the hope that you go into Chapter XI into liquidation and become bankrupt.

We met on several occasions with Mr. Kalkines, who is the General Counsel for the Health and Hospitals Corporation, whose affidavit appears in the Corporation Counsel's answering papers, and at that time we were advised by Mayor Beame and Deputy Mayor Gibson, and Budget Director Kummerfeld, that, well, there is some money that you say is owed you, Arthur Logan Hospital, and we may consider paying it to you, at least some part of it, we were advised, but they said, but first we want you to sit down with the Sydenham Hospital and we want you to discuss a possible merger with that hospital so as to relieve us of the problem of having the two hospitals working in proximity, the one doing well now and the other doing not so well.

And the Logan Hospital participated in a series of discussions aimed towards considering the possible merger. To make his story short, we were finally advised

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2 that the only alternative that the City, and the counsel
3 for the Health and Hospitals Corporation were really
4 considering, was the alternative to let the Arthur C.
5 Logan Hospital go into liquidation, completely shut down,
6 and then they said, we would take your name and append
7 your name over the door of the Sydenham Hospital and then
8 continue to function.

9 After participating in four meetings to effect
10 such a merger, with the constant promise coming from Mr.
11 Kummerfeld and the then Deputy Mayor Paul Gibson, that
12 if you show good faith in these proceedings we will
13 consider releasing some of the monies that you claim are
14 due to you.

15 At the end of that long process of negotiation
16 we were summarily advised that, no, we won't pay you,
17 and you will have to bring us into court. You will have
18 to sue us.

19 This is by way of just characterizing briefly --
20 I apologize from jumping from fact to fact -- this
21 indicates the type of situation we have actually been
22 up against.

23 One further piece:

24 The newspapers, the New York Times, particularly,
25 ran an article, which is part of the plaintiff's motion,

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indicating that when Ronald Sullivan, the reporter for the New York Times, had attended a session of the Health and Hospitals Corporation, and had talked to its officials, and had been advised that the Board of the Health and Hospitals Corporation had determined that in order to hasten and effectuate the demise of the Arthur Logan Hospital, to force it into liquidation, that Board would vote to terminate a hospital feeder, a 911 emergency number feeder contract, or subsidy as they call it, which has heretofore worked in the West Harlem area, which feeds and supplies patients to the Logan Hospital, the officials and board members of the Health and Hospitals Corporation advised the New York Times -- this was printed in the newspaper --

THE COURT: This is following this Martin article?

MR. HAYWOODE: That is correct, your Honor, yes. Advised the New York Times, and I am paraphrasing again because Mr. Sullivan uses different terms, but they are there so I will paraphrase what they said -- that we know that this is playing dirty tricks and we know that this is not playing the game according to Hoyle, but that we also know that if we can strangulate the flow of blood, because no hospital can stay open without patients --

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that is conceded, unless you are a City hospital and unless the City will subsidize your losses just for the purposes of keeping you out there, and why, you know, is open to speculation -- but the statement of the Times went, if we could strangulate the flow of patients coming into that hospital we can force them to close. We can force them to close.

Having forced them to close, or having cut off the number of patients filling their beds, their Medicaid reimbursement rates have got to fall, their other reimbursement rates have got to fall and then we will be rid of them.

That is the kind of statement that has been publicly made. We have seen the situation where the reimbursement rates, for some uncanny reason that I can't explain, because I don't understand how they arrive at those rates, and I don't know that many people do, voluntary hospitals are being reimbursed at the lesser rates, while the City hospitals, which are less efficient, which are not utilized to the same capacity, are getting more money.

In the face of that, the Health and Hospitals Corporation then, without any notice, indicated in the newspaper that they had voted to close off our ambulance

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2 service. We had no notice of it. There was a contract
3 back in '73, and the contract that is continued on an
4 executory basis since then, simply because they haven't
5 done us the courtesy of signing and executing any
6 additional contracts, though the service had continued
7 since '73. Payments were made but no contract was actually
8 signed.

9 Under the executory agreement, the last agreement
10 that we saw, it was clear that before this ambulance
11 service can be terminated that the City ought to find
12 for cause, and I was a general counsel with the City of
13 New York, and there is a boilerplating that we put in all
14 these contracts, and it is in this one, and generally those
15 contracts say that the City can terminate a contract for
16 cause or in the interests of the City, or on notice,
17 which is what this contract says, on 60 days' notice.

18 None of that was done. The first occasion we
19 had that the Health and Hospitals Corporation intended
20 to close the ambulance service contract was when the
21 newspapers began to call us and to inquire if we
22 knew this was being done.

23 When the information by way of the newspapers
24 became firm enough, we came to this Court and we sought
25 the injunction to enjoin that action and also to enjoin

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2 permanently the whole range of harassing and other actions
3 being conducted by the City, with a view toward forcing
4 the liquidation of the hospital.

5 " Even in the face of the order which was signed
6 by this Court on March 24th, on the evening of March 31st,
7 without any notice whatsoever, agents of the Health and
8 Hospitals Corporation came to the Arthur Logan Hospital
9 at 12:00 o'clock at night and indicated to Mr. Felipe
10 Cruz there, who was a dispatcher of the ambulances,
11 that we are here to lift your radios. We are going
12 to take your radios.

13 Mr. Cruz called the administrators of the hospital
14 and said, "My God, the people are here to lift the radios."

15 He said, "I had heard that we had a stay imposed."

16 We were finally able, when Mr. Cruz refused to
17 let the City agents get rid of these radios in our three
18 ambulances, to persuade those agents at 12:00 o'clock in
19 the dead of night to wait until the following morning by
20 telling them, look, there is a stay signed by a District
21 Court Judge in this circuit.

22 The following day when I spoke to the officials
23 of the Health and Hospitals Corporation they then owned
24 up, oh, yes, it was a mistake and we didn't realize
25 that there was a stay, despite the fact that I personally

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served the stay on the general counsel, Mr. Kalkines, and despite the fact that it was public knowledge, through the press and everywhere else, that such a stay was in effect.

Had those radios been taken out -- this is the critical issue which is not really part of the --

THE COURT: I am just curious, what did these people say about the fact that the City employees are working at midnight? Is there anything reported to you on that subject?

MR. HAYWOODE: This is the first time I have heard of it, outside of the Fire Department or the Police Department, but there they were at 12:00 o'clock at night, after the fashion of the Gestapo, the midnight walk -- I'm dramatizing it perhaps -- but had those radios been taken out, 200 people were brought in by the Logan Ambulance Service on that weekend, from the West Harlem area -- it is an area of 540,000 population. Someone commented several years ago that if the rest of the United States was populated to the same density, demographically, as that area is in West Harlem, that you can fit the entire population of the United States in the five boroughs of Manhattan.

That is how many people we have up there.

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2 Sydenham Hospital has a defective plant, that
3 doesn't mean much, many hospitals do, but Sydenham Hospital
4 does not have an ambulance ramp. It cannot receive
5 patients who are hit by cars, other casualties in the
6 street, who are brought by ambulances to the hospital.
7 Sydenham has no facility to wheel a patient in the
8 stretcher into its facility.

9 Logan Hospital does.

10 Had those radios been lifted, the Health and
11 Hospitals Corporation is really playing fast and loose
12 with the lives of people in the West Harlem community
13 because the alternative is, well, all right, if somebody
14 is hit by a car, put them in an ambulance and rush them
15 way across town or up to 168th Street to the Columbia
16 Presbyterian Hospital, if they will take him, or
17 take him to the Harlem Hospital way over on the west side,
18 but do whatever, but, you know, obviously, and there are
19 newspaper accounts most recently, of people lying
20 in the streets for 30 minutes waiting for ambulances --
21 but so intent has the Health and Hospitals Corporation
22 been to close the Logan Hospital that they are willing
23 to play this Russian Roulette with citizens and residents
24 of the City of New York.

25 However, the plaintiff, in the face of these

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acts, comes to this Court and it asks that a temporary restraining order be issued to enjoin the Health and Hospitals Corporation from terminating its hospital feeder contract.

There are many facts alleged in our complaint, many issues which have to be thrashed out in our complaint, they can't possibly be taken care of, as everyone would concede, in a day or a couple of days. But one single fact stands out, if the Health and Hospitals Corporation is allowed to cancel that hospital contract, they will preclude and foreclose every issue that Logan could ever raise here because the hospital could not survive without the feed of patients. They know that. They have said that to the New York Times and to other reporters.

By closing off that ambulance contract they will effectively preclude us from any hearing, from any appeal. They would work such irreparable damage to the Logan Hospital, cutting off approximately 35 per cent of the patients coming in -- we have 216 beds up there, which is sometimes filled to 219 capacity, I don't know where they keep the other three, but we are constantly filled, but they would so cut into our patient ratio that the hospital could not continue to survive and would have to go into liquidation as opposed to corporate reorganization

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2 where it presently is.

3 What has happened is this. Logan Hospital
4 filed a petition with the Bankruptcy Court on Octol 6th.
5 Logan Hospital subsequently submitted billings and
6 has been submitting billings for Medicaid reimbursement
7 to the City of New York since January of 1976.

8 The City effectuated a policy of recouping
9 some 20 per cent against every billing submitted by the
10 hospital.

11 We question that. The City alleges a debt owed
12 to it by the hospitals for money which it says it gave to
13 the hospitals in previous years, though our officials were
14 there with Mr. Kavanaugh, and the then Comptroller,
15 Mr. Beame, and the other City officials, when monies were
16 given to the hospital and it was always our understanding
17 that the hospital was being reimbursed for services it
18 was providing to the indigent in the City of New York
19 that the City's hospitals itself could not provide.

20 In those days, the Inspector of National Health
21 Insurance wasn't there; the City had no identifiable or
22 perceived interest in promoting its own hospitals as opposed
23 to the voluntaries, so that they were more generous in
24 providing assistance.

25 Now suddenly, with the filing of the Chapter

XI proceeding, the City has said, "Well, we now have to try to recover some \$8 million," at one point they said it to be \$8 million, though I have seen it to be represented as \$9 million -- in negotiations and discussions with the City's officials has been called \$7 million and then \$5 million -- but they said, "You owe us some amount of money in that area." And that is why they are recouping from the Medicaid billings in January of '76.

After we filed the petition in Chapter XI on October 26, 1976, now the City says, any monies that was owed to you before that filing, any money which was owed to the Logan Hospital before you became the debtor in possession, after the filing of the petition in Chapter XI, they said that is money that we don't have to pay you. We don't have to pay you that.

In the wake of that decision, made at the Comptroller's office, so far as we can identify, the City proceeded to withhold some \$1.4 million, which no one concedes would have ordinarily come to the Logan Hospital, from which it could have continued to pay its tax liens, which it must do to stay viable in the Bankruptcy Court and under reorganization, from which it could have maintained its expenses -- and the City has said

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2 we are not going to pay this money by way of settof because
3 you owe us some \$6, \$7, \$9, \$5 million.

4 When we pressed that issue of, you know, where
5 does the dbt come from, various officials in the City's
6 departments conceded to us in conversation, both to myself
7 and to Mr. Trepper, who is the counsel in bankruptcy
8 from Levin & Weinbrock, conceded to us that if they had
9 to prove that debt they couldn't prove it -- they stated
10 that.

11 What the truth of it is I don't know, but that is
12 what they stated to us in the course of the last four
13 months when we have talked about it. And now the
14 question is, well, fine, if the City claims that we owe
15 them this amount of money, perhaps they would enter the
16 Bankruptcy Court and try to prove their claim, because
17 obviously, you know, it is not enough to just assert
18 that it is there, but come into bankruptcy and prove it.

19 The City's position has been no, we don't have
20 to do that, all we have to do is avail ourselves of
21 self-help and grab off this money, the \$2.1 million,
22 that we sue about, and all we have to do is make sure
23 that we don't take a loss should you go into liquidation.

24 THE COURT: Isn't that a violation of the
25 Bankruptcy Act?

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MR. HAYWOODE: We feel it is. A turnover proceeding was brought by Levin & Weinbrock before Judge Lewittes in the Bankruptcy Court to ask the City to turn this money over. The City makes this part of their answering affidavits. They include the entire file, or most of the file from the bankruptcy action.

But the City does not include the fact that before the bankruptcy judge they are questioning the jurisdiction of the Bankruptcy Court. They are saying the Bankruptcy Court has no jurisdiction over us. They are saying there is no way that the United States Bankruptcy Act will allow a bankruptcy judge to tell us that we can't avail ourselves of self-help by simply not paying monies, which as an agent and almost as a fiduciary we are obligated to pay over to the hospital under the Medicaid Act.

They are saying we can keep the money and the Bankruptcy Court has no jurisdiction. That's what they said.

That issue is pending there, as the City's brief suggests.

So that the Logan Hospital, whose deficit is only about \$1.4 million yearly over the last many years, like all the other voluntary hospitals, they have

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2 the difficulties, the Logan Hospital that only filed a
3 Chapter XI petition because Local 1199, the union, had
4 perfected a \$370,000 judgment against it and when we heard
5 that that judgment was being placed in the hands
6 of the Marshal -- and I believe there is a similar
7 situation now pending before Judge Broderick in this
8 court where one of the nursing homes has the unions about
9 to attach its Medicaid funds, and they are arguing that
10 that can't be done, but however, it was only \$371,000 that
11 prompted the hospital to go into Chapter XI because it
12 could not have its cash flow interfered with by someone
13 who said all at once, pay me \$371,000.

14 But after going into Chapter XI the City has
15 now withheld \$2.12 million and the Logan Hospital is
16 put in a situation where to protect the paltry \$370,000
17 it has had that kind of money cut off from it simply on
18 the theory that suddenly the City decides that it can
19 recoup money. The City can't recoup that money under the
20 Medicaid Act unless they comply with certain procedures
21 under that Act, and they haven't done that.
22 They have simply asserted the right.

23 Within the context of all these facts, because
24 I am afraid that the Corporation Counsel's brief tends
25 to suggest, well, this is just a question of closing

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down an ambulance service and we have the right to close an ambulance service, and all that sort of thing, but that is really not the issue here.

Within the context of all these facts, the hospital now comes to this Court and prays the order of the Court continuing and finding a premanent injunction against the cancellation of the hospital feeder contract until more facts can be ascertained through evidentiary proceeding, and asking that the City be enjoined by mandatory injunction from further withholding monies which, without question, are owing to the Arthur Logan Hospital, unless they can justify and establish a legitimate claim to it, and unless they can establish a rationale or reason for its decision to all, in the period of six months, try to pull approximately \$5, \$6, or \$7 or \$8 or \$9 million, whichever they say they are owed, they are going to pull all this out of the hospital's operation over a period of six to nine months, or in the last six months this is what they have attempted to do.

If they do that the hospital dies; there is no question about it. Mr. Whalen, who used to administer the City's system of hospitals has written an article in one of the newspapers where he accurately describes, so accurately described what the City is about, and

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2 he likened the City's conduct to that of a very elegant
3 woman who is walking her dog and when the dog stops by the
4 side of the curb she turns her head and pretends that
5 she doesn't see what the dog is doing. And she pretends
6 that she doesn't want to know what the dog is doing.

7 In a similar fashion, using Mr. Whalen's
8 analogy, that is what the City is doing. It is saying
9 we are just running a bookkeeping thing here and the
10 hospital owes us this money and we have the right to
11 effect a setoff and to protect our interest because you
12 are in Chapter XI and you may go into bankruptcy and all
13 this sort of thing, but they are pretending not to see
14 that what they are doing is killing a hospital.

15 It is in the context of that totality of actions
16 that we come before this Court and ask its relief.

17 Thank you, your Honor.

18 THE COURT: I'd like to hear from the City first,
19 if you don't mind.

20 MR. WEINBERG: Yes, your Honor.

21 If your Honor please, I should like to first
22 speak about the actions that Mr. Haywoode said certain
23 employees of the Hospital Corporation took with respect
24 to the radio. This matter was assigned to me at a very
25 late date. It had been in the office. I realized I

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2 couldn't get ready for the hearing. I requested a two-
3 week adjournment.

4 In examining the papers and recognizing,
5 as I will argue later, your Honor, that no official of
6 the Hospital Corporation is a party defendant in this
7 action, the Budget Director is labeled pro tem administrator
8 of the Corporation. There is no such title.

9 Nevertheless, I spoke to the assistant general
10 counsel of the Hospital Corporation and I told him that it
11 was my opinion that in view of the fact that I had requested
12 this adjournment, and apparently the plaintiff felt
13 that he had a proper restraining order, and I am sure
14 your Honor felt that it was proper, too, I told
15 them that they were to take no action whatsoever with
16 respect to that ambulance feeder contract.

17 So whatever happened, your Honor, was simply
18 a mistake and the Hospital Corporation agreed with me
19 that they would do nothing. I apologize if anything was
20 done.

21 The issue in this case, your Honor --

22 THE COURT: How did it get to be done? What
23 did your -- you obviously were embarrassed at some point.
24 What did you find out and what steps have you taken
25 to make sure this doesn't happen again? How do we know

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2 it won't happen at midnight tonight?

3 MR. WEINBERG: Actually, your Honor, I was
4 unaware -- I had not read this in the papers. It was
5 only when I requested that newspaper clippings concerning--

6 THE COURT: Let's go back to Thursday night,
7 March 31st where three stalwarts of the City of
8 New York go out to this hospital to reclaim radios
9 which, I gather, are City property that are in the
10 ambulances by reason of some agreement -- all right.
11 They are persuaded not to take them out at midnight. I
12 gather something happened the next morning to confirm
13 the fact that they were not to act. They were apparently
14 talked into not acting until the daytime and then the
15 next day they were called off by somebody, right? Or
16 don't you know?

17 MR. WEINBERG: I had no knowledge that --

18 THE COURT: Today. Do you know today what
19 happened on the morning of March -- of April 1st?

20 MR. WEINBERG: I don't know, your Honor.

21 THE COURT: Why didn't somebody find out?

22 MR. WEINBERG: I was unaware of the incident
23 until I asked for clippings. I never saw it in the
24 papers, your Honor. I don't know what paper it was in.
25 I am not sure it was in, let us say, the News or the Times.

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2 Do you know, Mr. Haywoode?

3 THE COURT: Do you know even as of this moment
4 if anybody over at the Health and Hospitals Corporation
5 knows that there is an order of this Court?

6 MR. WEINBERG: I informed -- as a matter of fact,
7 Mr. Haywoode served the order of the Court on the
8 general counsel. Is that correct, sir?

9 MR. HAYWOODE: That is correct.

10 THE COURT: I suggest to you that you have a
11 duty to your client to avoid possible contempt charges
12 here to make sure that everybody knows what is going
13 on. I must confess that it is more than passingly
14 astonishing that somebody shows up at midnight at a
15 hospital to yank some radios.

16 Go one to the merits.

17 MR. WEINBERG: In this case, your Honor, the issue
18 is one of legality. The issue is not one of wisdom
19 of the actions complained of, whether it be actions of
20 the executive branch or the legislative branch. The sole
21 question is the power of the defendants to do the
22 acts complained of, whether wise or unwise.

23 The essential difference between Sydenham
24 Hospital and Logan Hospital is simple: Sydenham Hospital
25 is one of the hospitals of the New York City Health and

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2 Hospitals Corporation. Logan Hospital is a private,
3 nonprofit, voluntary hospital.

4 The City of New York owes a duty to the Hospitals
5 Corporation. This corporation was created in 1969, and
6 all the municipal hospital hospitals were then transferred
7 to the jurisdiction of the Hospitals Corporation.

8 Pursuant to the Hospitals Corporation Act, your
9 Honor, the City of New York is mandated, mandated by
10 the State Legislature to provide tax levy funds to support
11 the Hospitals Corporation.

12 The State Legislature recognized that the
13 reimbursement obtained, Medicaid, Medicare, Blue Cross,
14 private collections, would still be inadequate. The
15 budget, I believe, is roughly \$1 billion, of which,
16 and I just use approximate figures, your Honor, one
17 half billion dollars comes from the City of New York.

18 They have an obligation to the Hospitals
19 Corporation. There is a dispute between the Corporation
20 and the City, your Honor, that still haven't been
21 resolved, whether the City has given them the funds
22 mandated by law for certain earlier periods.

23 In all fairness, the City contends that they
24 have a counterclaim of having advanced \$130 million
25 to the Hospitals Corporation. But the essential fact,

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2 your Honor, is that the City officials must, pursuant to
3 law, give the Hospitals Corporation money for its own
4 hospitals.

5 There is absolutely no legal duty on the part of
6 the City of New York to give any monies to Logan
7 Hospital, whether it be wise or unwise.

8 At one point Mr. Haywoode spoke of the actions
9 of various City officials and he omitted, I think, or --
10 I don't recollect, but I think he omitted the Comptroller.

11 The fact is that at the present time Logan Hospital
12 was not -- is not being discriminated against from the
13 viewpoint of the Comptroller's office, who is now giving
14 them more favorable advances, money in advance of
15 Medicaid billings, than any other voluntary hospital.

16 The other voluntary hospitals must wait one month
17 after -- after one month's billing, your Honor, they
18 receive 90 per cent of the estimated billings.

19 Logan Hospital receives 100 per cent of its
20 estimated billings and receives it every week.

21 While Mr. Haywoode talks as though perhaps this
22 advance, allegedly \$5, \$6, \$7, \$8 or \$9 million, does not
23 exist, it is the City's position that, again, giving
24 Logan Hospital more favorable treatment than any other
25 voluntary hospital, there was indeed a debt of over-

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advances of \$9 million.

The affidavit, your Honor, of the Chief of the Charitable Institutions Bureau of the Comptroller's Office in the bankruptcy proceedings, which I have annexed to my papers, indicates that he believes \$6 million is still owed to the City of New York.

In fact, the other day at a meeting with HEW and the Comptroller's office, Mr. Klingnick had said that he had meetings with the local Logan people and that the books of the City of New York are always open to Logan to ascertain whether or not the advances were there.

I might state, your Honor, that Mr. Haywoode indicates that now -- that he is now in Chapter XI, that somehow the City might seek to recoup the total amount of money.

I have indicated in my brief, your Honor, the affidavit of Mr. Klingnick -- and it is in his affidavit in the bankruptcy proceedings, your Honor, that since Logan became a debtor in possession the City has not deducted, nor do I believe that they have the power to, and I don't profess to be an expert in bankruptcy proceedings, your Honor, I don't think we have the power to deduct one penny from any services rendered after Logan became a debtor

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2 in possession.

3 Where we have the power to deduct for services
4 rendered prior to the date they became a debtor in
5 possession for monies owed to us is now being handled
6 in the Bankruptcy Court.

7 Our office didn't take the position that we
8 are not subject to Bankruptcy Court. The motion made
9 is that the Court lacks subject matter jurisdiction
10 because where there is a valid debt owed by the bankrupt,
11 it is our contention, your Honor, an adversary proceeding
12 is the proper way to establish the rights of the parties.

13 THE COURT: Are you saying at the same time that
14 by -- just because you happen to be in possession of
15 funds that are apparently State and Federal funds that are
16 being channeled -- am I correct in this, Mr. Haywoode? --
17 because you are in possession of the funds of others
18 as to whom you are an agent, that you may unilaterally
19 determine that that debt is due without any court
20 determination and say, "I'm going to hold it up."

21 We are talking about now monies that you claim
22 are due for debts before the Chapter XI.

23 What right have you to say, "Since I take the
24 position I am owed this money, I may therefore setoff
25 against it new monies that come into my hands which
otherwise I would be required by law to turn over to

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2 Logan," what gives the City that right to become in
3 effect a judge of its own debt and say, I am going to
4 pay myself on this without any determination or judgment
5 of any kind?

6 MR. WEINBERG. If I may, your Honor, give you a
7 picture, as I understand, how the Charitable Division
8 of the Comptroller's office has worked in the past and
9 the way they are doing it now.

10 For a period of time every voluntary hospital --

11 THE COURT: Stick with Logan.

12 Logan says, and I am trying to grapple with
13 these facts from a dead start, but Logan says that
14 you are -- that it is owed some \$2,100,000, I think Mr.
15 Haywoode said to me -- that is being wrongfully withheld
16 because the City asserts the right of self-help and
17 therefore has retained State and Federal monies that
18 otherwise are due to Logan.

19 What about that? Is that so? Is there
20 \$2,100,000 that would otherwise be due if you hadn't
21 kept it?

22 MR. WEINBERG: I am not sure of the precise
23 accuracy --

24 THE COURT: Forget the accuracy. Is there--
25 let's use \$2 million roughly, all right.

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MR. WEINBERG: If I may, your Honor, Logan and other hospitals have problems in that they need cash before the City finally approves Medicaid billings.

The City has always given the voluntary hospitals, including Logan, advances in anticipation of the Medicaid billings. The City now has \$50 million outstanding in all the voluntary hospitals.

Starting --

THE COURT: Of advance payments?

MR. WEINBERG: Yes, sir.

THE COURT: I understand what you are telling me. All right.

MR. WEINBERG: I have been over at City Hall in Lindsay's day when Logan had problems and the City, in its generosity, your Honor, in its generosity permitted those overadvances to accumulate because when Logan's billings came in, they didn't approximate what was being advanced.

In all fairness, your Honor, for a period of time they were letting every voluntary hospital have about \$2 or \$3 million -- two or three months' advance payments.

At the time with the fiscal crisis the City sought to retrench. They have \$70 million, and these are tax-levied funds. The City advanced it out of

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2 its own pocket. Logan knew that it was getting it.
3 Logan knew its billings weren't adequate. But the City
4 was most generous with Logan. \$9 million was outstanding.

5 THE COURT: I understand what you are saying.
6 I can appreciate that.

7 Let me put this to you which springs to
8 mind:

9 If the City has permitted Logan and other
10 voluntary hospitals in effect to get ahead of the --
11 all right, let's assume that -- that practice continues
12 for obviously a minimum of four or five years at this
13 point -- if you say this was happening back in Mayor
14 Lindsay's administration.

15 MR. WEINBERG: Since 1969, I believe, your Honor.

16 THE COURT: Seven years.

17 If all of a sudden the rug is pulled out of --
18 from under one voluntary hospital by someone saying
19 I am not going to give you these advance payments any
20 more, where the practice has been set up to do that --
21 all right -- and suppose that the Court were to -- were
22 compelled to come to the conclusion that the reason for
23 the termination of the payments was not so much a
24 question of self-help but was motivated by a desire to
25 assist Sydenham in its battle for life. What about that?

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2 MR. WEINBERG: Your Honor, I respectfully
3 state the fact that we want to help Sydenham, and at
4 the same time by our action -- and I am speaking of,
5 let us say, the emergency contract vehicle -- by
6 our action we do harm Logan, I don't, and I respectfully
7 urge, I don't believe that this Court can declare
8 such action illegal.

9 THE COURT: It would be a prima facie tort,
10 wouldn't it?

11 MR. WEINBERG: Your Honor, Mr. Haywoode has
12 listed a number of allegations, and while he said that--
13 alleges harassment in this last year, he lists a cancella-
14 tion of a 1975 contract. He gives no reasons.
15 He lists the fact that there is no written ambulance
16 contract. He fails to state no voluntary hospital
17 has a written ambulance contract, to the best of my
18 knowledge, and they are negotiating.

19 In his papers on the order to show casue, your
20 Honor --

21 THE COURT: Let me stop you a minute. You are
22 slipping away from the point. Unless we assume that Mr.
23 Ronald Sullivan, reporter for the New York Times, is
24 reporting falsely, he attributes to certain officials
25 that you represent here statements such as "If Logan

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2 can't get any patients then they can't get any money and
3 they will have to close."

4 The whole idea is to make sure that Logan
5 closes first.

6 I assume that Mr. Sullivan, as a reporter,
7 consistent with the laws of libel and the accuracy of
8 his work, and the desire to continue to work for the
9 New York Times, is going to report accurately.

10 If he is reporting accurately the spirit that
11 pervades the Health and Hospitals Corporation, then
12 it is crystal clear, without even having to come to what
13 Mr. Haywoode has said about post-article statements
14 to the Times by Board members, and he said, "I know it
15 is dirty tricks, but if we can strangle the patients
16 to the hospital we can force them to close."

17 If that is so then the Court begins to look
18 around and say, well, every time you try to make this
19 body bleed somewhere I question your motive, particularly
20 where it is a unique sort of activity.

21 That gets me back to the \$2,100,000, or whatever
22 you want to talk about. Has there been a withholding
23 of monies here that has been different than to any other
24 hospital?

25 MR. WEINBERG: I believe, your Honor, that the

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City attempted to recoup. No hospital has had such great advances as Logan, and the City is constantly recouping monies that it has advanced. I believe they started recouping in early '76, and in some instances they took out 5 per cent, I believe, in another instance perhaps 10 per cent.

I don't believe that when they went into the Chapter XI proceeding that a decision was made to withhold, let us say, and I think you mentioned Judge Lasker's award, and I have seen the letter whereby they indicate that they will pay no part of that retroactive award because Logan is indebted to the City of New York.

So they did change their policy, your Honor, at one time taking out, as I have said -- I have seen some payments where 5 per cent was deducted and others 10 per cent.

Your Honor, please, the Comtroller's office is not trying to strangle Logan Hospital. It is more generous to Logan today than to any other voluntary hospital and with respect to the ambulance contract, I respectfully urge this Court, while I ask the Hospitals Corporation not to take any action, there is no defendant in this action who is a director of the Hospitals Corporation or an officer of the Corporation.

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2 Kummerfeld is not. All he is is a member of a special
3 committee that was created by the Hospitals Corporation.

4 THE COURT: Let me ask you this:

5 .. Can we not, sir, so conduct ourselves here
6 that we will get to the merits of this? I am not going
7 to decide this case in any way, shape or form based
8 upon whether the hospital has in fact named the right
9 person. I want that to be perfectly clear, because if they
10 haven't named the right person I am going to give them
11 leave to name the right person in five minutes. So let's
12 go beyond that.

13 If you want to deal with this thing with me
14 in what I would regard as a getting to the heart of the
15 matter, I would just as soon as you tell me who the right
16 person is and we will see to it that he is served.

17 MR. WEINBERG: I believe they are seeking punitive
18 damages here. I would believe --

19 THE COURT: They are not asking me that at
20 this moment either.

21 I have two or three essential problems:

22 One, does the -- is the ambulance service
23 being improperly cut off here?

24 Two, would that cutting off constitute irreparable
25 injury? If I get answers on those in a particular way,

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2 much of my task has been done and I don't want to have
3 to stub my toe here over whether or not the right person
4 has been named. That is not and should not be the
5 problem of this Court and I don't think should be
6 something that for very long needs to be urged by you,
7 because if we haven't got the right person I will see to
8 it that we do.

9 MR. WEINBERG: I will cooperate with your Honor
10 in any way I can, but I do believe that the Board of
11 Directors should be a party defendant.

12 THE COURT: That may be.

13 MR. WEINBERG: I asked them to obey your restrain-
14 ing order, your Honor, I was the one who told them,
15 even though I don't believe that they weren't --
16 they are not parties to the action --

17 MR. HAYWOODE: Your Honor, I apologize to Mr.
18 Weinberg and the Court for the interruption because I
19 don't want to do that, but Mr. -- Mayor Beame is a trustee
20 of the Hospitals Corporation Board. He sits on that Board.

21 MR. WEINBERG: He is not. It is not Mayor
22 Beame. It is a Deputy --

23 THE COURT: The Deputy may be performing a
24 delegated function, which is what Mr. Haywoode is saying.

25 MR. WEINBERG: The law provides for the Deputy

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2 Mayor, your Honor.

3 THE COURT: Provides what?

4 MR. WEINBERG: Five members of the Board of
5 Directors are members by virtue of the office they hold.
6 The Health Services Administrator, the Health Commissioner,
7 the Social Services Administrator, the Commissioner
8 of Mental Health and Retardation and the Deputy Mayor
9 City Administrator, those are the five members.

10 Mr. Haywoode was informed, I believe by Dan
11 Cohen, when you served the papers, I believe Dan told
12 you that Mr. Kummerfeld was not the administrator of
13 the Hospitals Corporation.

14 MR. HAYWOODE: We had a private investigator
15 serve the papers.

16 MR. WEINBERG: I'm sorry.

17 THE COURT: Mr. Weinberg, can we do this,
18 can we deem the right party to be named in this
19 caption and amend it accordingly, since you obviously in
20 good faith have come here representing the very interest
21 that we are talking about?

22 MR. WEINBERG: I would ask your Honor if the
23 Hospitals Corporation could be apprised of your decision
24 so that they knew any order would be binding on them.
25 In other words --

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2 THE COURT: I assume they can be. I assume
3 you would have the knowhow to tell exactly who it is.

4 MR. WEINBERG: I might add, your Honor, I
5 am not always their attorney and they have a perfect
6 right to select outside counsel. If that Board of
7 Directors wishes to, it can choose its own counsel.
8 I am their attorney when they --

9 THE COURT: Let's put it this way, as of this
10 moment, short of holding a hearing on whether or not
11 the proper parties are before me, and given your
12 statement that the proper parties have been notified
13 of the Court's various actions and your further statement
14 that you would cooperate with us to make sure we have the
15 right parties, I am going to go ahead on the basis
16 that we have the proper parties, unless you urge upon
17 me at some point that we don't, and then I may have
18 to hold a hearing on that, which I think all of us
19 would prefer not doing, and when I have made a conclusion
20 on that, if it turns out that you are correct, obviously
21 that is remedial by the service of new process.

22 Am I correct in that? .

23 MR. WEINBERG: Could your Honor deem the --
24 I don't know the mechanics -- the title amended to include
25 the Board of Directors and order that be done and I

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2 will serve the Board of directors with that order. As

3 I said, they need not choose me as their counsel.

4 THE COURT: Mr. Haywoode, I am sure you have no
5 objection to that.

6 MR. HAYWOODE: I would have no objection, your
7 Honor.

8 THE COURT: That request of yours is granted.

9 While we are at it, why don't we name the proper
10 Deputy Mayor. Which Deputy Mayor?

11 MR. WEINBERG: I am not certain.

12 Who took Mr. Gibson's place?

13 MR. HAYWOODE: Lucille Rose, but she is not acting
14 officially as of this time. It would be Deputy Mayor
15 Gibson.

16 THE COURT: Is Mr. Gibson still the Caretaker
17 Deputy at this point.

18 MR. WEINBERG: I am not certain.

19 MR. HAYWOODE: I believe he is. As part of
20 the exhibits placed here is a resolution by the Corporation
21 which lists the persons present. It lists Mr. Gibson
22 as having voted. That is Exhibit B, Mr. Weinberg,
23 which is the exhibit where you refer to the termination
24 of Dr. Holloman.

25 I would presume since Mr. Gibson is listed

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2 that Mr. Gibson would be the official who would sit. That
3 is the Third Deputy Mayor, and it is the office of the
4 Mayor and the Mayor has that nominal seat. He is
5 participating for the Mayor.

6 THE COURT: Why don't I let counsel resolve that
7 because you seem to be all of good spirit in this, and Mr.
8 Weinberg, you will assist, I gather, to make sure
9 that we have the proper cast of characters here and
10 that everybody is duly notified.

11 MR. WEINBERG: And that is pursuant to your order,
12 your Honor?

13 THE COURT: Well, you moved me to add the Board
14 of Directors of the Corporation, and I have granted that.
15 You are going to notify them of the determination
16 and serve them with a copy of these papers so that we
17 are in business.

18 Let's go on, though, because the problem that we
19 have here is whether a preliminary injunction should
20 be granted and that turns on questions of irreparable
21 injury, probability of success on the merits, tipping
22 of balances of hardship, and things of that nature.
23 That is what we really should be focusing on.

24 MR. WEINBERG: The plaintiff seeks an injunction
25 to compel the City and the State to pay a reimbursement

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2 rate agreed upon as alleged in the wherefore clause,
3 paragraph A, and which plaintiff claims was set by
4 the City and State.

5 Plaintiff also seeks to compel the City and
6 State to pay it a rate that would cover the reasonable
7 cost of the services.

8 I think Mr. Haywoode conceded on oral argument
9 that the City in no way fixes the rates. Those rates
10 are fixed exclusively by the State of New York. The rates
11 are set by the State, not only for the voluntary hospitals
12 but for the proprietary hospitals and for the municipal
13 hospitals.

14 I believe in a case now before Judge Lasker,
15 I believe the Greater New York Hospitals Association
16 brought a lawsuit against the State, the Hospitals
17 Corporation, I believe, intervened as a party plaintiff,
18 feeling that it, too, was aggrieved by the rates
19 set by the State.

20 So, your Honor, it is my argument that no
21 injunction should issue against the City with respect to
22 the relief demanded in the paragraph A of the wherefore
23 clause.

24 If that can be construed, your Honor, in any
25 way to state that the City cannot withhold monies

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that it feels is due to Logan Hospital, the answer is to be found in the affidavit of the Chief of the Division of Charitable Institutions, the answer in part, and that is that the City is not withholding one penny of monies due Logan Hospital for services rendered after the date that they filed their petition in bankruptcy.

With respect to the monies that the City admit they withheld for services rendered prior to Logan going into bankruptcy, that matter, your Honor, is not before the Bankruptcy Court in which Logan is seeking an order to compel the City to pay the \$2 million.

I don't know, your Honor, what would happen if the Bankruptcy Court were -- well, let us say the Bankruptcy Court ordered the City to pay that money, then I would assume that issue would no longer be in this case, because I think he seeks the same order.

If the Bankruptcy Court decides that the City cannot be compelled to pay, then I assume that that issue would be in this case. Unless, again -- again, I don't know if appeals are taken in the Bankruptcy Court, but it is our allegation, and Mr. Klingnick, in his affidavit, in the Bankruptcy Court, your Honor, and I respectfully ask the Court to take judicial notice, claims that there is a debt of more than \$6 million.

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2 Logan, in its papers, and I believe possibly
3 in Mr. Allen's affidavit in the papers in the
4 Bankruptcy Court, admits that there are some monies
5 owed to the City, but I believe he claims that Logan
6 has offsets against the monies owed, so there is a
7 difference of opinion between the City and Logan as to how
8 much money is in fact owed, with Logan also claiming
9 that once being in bankruptcy the City cannot withhold
10 those monies.

11 THE COURT: Let me ask you this:

12 Are there other -- are there any comparable
13 situations at other hospitals in the City where you are
14 withholding 5 or 10 or 15 or 20 per cent against past
15 over-payments?

16 MR. WEINBERG: I am not that familiar with the
17 procedure of the charitable institutions, your Honor.

18 As a rule, they make certain the total amount
19 of advances now, as I understand it, for 70 voluntary
20 hospitals, is only \$50 million.

21 As the Medicaid billings come in, your Honor,
22 I think they make adjustments. If they have overadvanced
23 they take back. But Logan's was a peculiar one.

24 In addition, of course, your Honor, the City
25 is faced with a problem of, for example, French

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2 Polyclinic going into bankruptcy. The City has overadvanced.
3 But as I understand it, nowhere near the sum of money,
4 and I think the same thing happened with Interfaith
5 Hospital that closed. When they make the advances
6 they are not able to recoup in time. And when the
7 hospital closes the City is out that money, your Honor.

8 THE COURT: Yes, sir.

9 MR. WEINBERG: With respect to the services for
10 emergency ambulance, as the plaintiff indicates in his
11 complaint, there is no written contract, your Honor,
12 and there is no written contract for any voluntary
13 hospital --

14 THE COURT: Then that really isn't an issue
15 here at all, is it, the absence of a written contract?

16 MR. WEINBERG: The question would be power,
17 power to terminate. There is no contract. I admit,
18 and it is in the complaint, Logan knows what its obligations
19 were under the contract, and I assume they are still
20 carrying out those obligations.

21 The City, in turn, has been reimbursing them
22 at the rate fixed by the contract, your Honor, though
23 I understand now that the City has adjusted that rate
24 downward retroactively and that Logan as well as all
25 the voluntary hospitals, they have all agreed to

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2 take a lower amount.

3 I might point out, Mr. Allen, in his affidavit,
4 attached to the order to show cause, mentions the
5 fact that the City owes Logan, I believe, \$122,000, not
6 having paid it for services rendered the last six months.

7 Again, nobody is pointing a finger at Logan.
8 The Hospitals Corporation hasn't paid any voluntary
9 hospital, and as I understand it, from my conversations
10 with them, payments are going to be made shortly to
11 the voluntary hospitals and to Logan.

12 Again, another example of your Honor not having
13 the complete picture here. No one singled out Logan in
14 this case. The Hospitals Corporation has its own
15 financial problems and they didn't make any payments
16 to any of the hospitals.

17 THE COURT: Let me be very blunt with you.
18 Is there any truth to what Mr. Sullivan writes in his
19 article?

20 MR. WEINBERG: Your Honor, I was not present
21 at the Board of Directors meeting. I have never spoken to
22 any of them, with the exception, I assume, of Dr.
23 Holloman. I have a resolution in front of me and I
24 state, your Honor, I state that the Hospitals Corporation
25 has the power -- I respectfully urge, whether wise or

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unwise --

THE COURT: Whether properly motivated or
improperly motivated?

MR. WEINBERG: Your Honor, they have a choice --

THE COURT: We are not talking about wisdom here,
we are talking about motivation.

MR. WEINBERG: Your Honor, they are trying to
help Sydenham, and not Sydenham exclusively, because,
your Honor, as I understand it, there will be other
hospitals, including, as I understand it, a voluntary
hospital, will be a receiving hospital for the emergency
patients, too.

I believe they have the power to favor Sydenham
over Logan, and according to the resolution, "Whereas
the continued operation of Arthur C. Logan Memorial
Hospital is seriously in question ..." your Honor, even
with the ambulance contract, and I certainly, and no one
in his right mind wants to see a hospital go out of
existence -- who will guaranty that Logan will continue
in existence.

I don't know what will happen in the Bankruptcy
Court. In the --

THE COURT: Let's put it this way, I would agree
with you that nothing in life is certain, but if Logan is

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2 performing a needed ambulance service, what has all this
3 that you are talking about got to do with anything?
4 Why cut it off if it is needed, particularly if you
5 cut it off and patients are then -- then have to be
6 diverted to a hospital that admittedly has no ramp and where
7 the people have said we are going to carry them in?

8 That would make it a lovely sight, it seems
9 to me, on the sidewalks in upper New York to see all those
10 people being carried in on a Saturday night.

11 MR. WEINBERG: Your Honor, as I understand it,
12 the ambulance district is from 80th Street to 150th
13 Street. There are other hospitals, your Honor, and as
14 I understand it, they will not all be taken to Sydenham
15 Hospital.

16 THE COURT: I know. But my answer to that is
17 what difference does that make as long as Logan
18 is performing a service? Why is the ambulance service
19 being cut off if they are performing a service?

20 MR. WEINBERG: The Board of Directors, again,
21 your Honor, decided that Sydenham would perform that
22 service.

23 I would assume they are favoring Sydenham
24 over Logan. But again, your Honor, I respectfully urge
25 the question is not of wisdom, the question is not

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2 a more efficient hospital than Sydenham.

3 There are so many cases, your Honor, in which the
4 hospitals themselves have sued the Hospital Corporation
5 claiming they were discriminated against --

6 THE COURT: Mr. Weinberg, I don't want to get you
7 into arguing something here to me that you may on reflection
8 not wish to stand behind, but it doesn't seem to me to
9 make an awful lot of sense to a community that is receiving
10 an efficient ambulance service to say that the City
11 Hospitals Corporation wants to favor a hospital that
12 is going to render an inefficient ambulance service,
13 and therefore cut off a service that the hospital renders
14 as an efficient one. That doesn't lend itself to me.

15 MR. WEINBERG: I didn't mean to state it in that
16 manner.

17 THE COURT: I sort of cautioned you on that.
18 You see, then you get into the position of what
19 about the people in the community, don't they have a
20 right to have accident service instead of a jerry-built
21 kind of service? They probably don't want to go down to
22 80th Street in an ambulance.

23 Maybe when they get down there the hospital
24 won't give them the same immediacy of treatment. They
25 might have to go blocks further. I don't know.

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2 I have trouble with what you are urging on
3 me, that because they have the power to favor Sydenham
4 they can terminate a valuable community service and sub-
5 stitute for it an admittedly inferior one. That doesn't
6 make sense to me.

7 MR. WEINBERG: I have been told, again, your
8 Honor, that Roosevelt Hospital, Harlem Hospital, that
9 they will be receiving hospitals in the event that Logan,
10 the services of Logan are terminated. That is what I
11 was told by an official of the Hospitals Corporation.

12 THE COURT: Why is that? Who cares? Why terminate?

13 MR. WEINBERG: Again, I must respectfully urge --

14 THE COURT: You are not terminating because ambu-
15 lance service is inefficient. So why say we are
16 terminating but others will pick it up. Why terminate
17 at all?

18 MR. WEINBERG: This allegation is based, your
19 Honor, I believe, on violation of equal protection. That
20 is the statute, the constitutional claim, I believe --
21 I am not quite certain because I -- with all due respect
22 to Mr. Haywoode -- sometimes the City and State are put
23 together in some of the allegations and I don't believe
24 that the actions of the Hospitals Corporation can be
25 construed as violating the equal protection clause.

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2 MR. HAYWOODE: Privilege of immunities, also.

3 MR. WEINBERG: Again, there is no legal duty,
4 your Honor, owing by the City, no matter how desirable
5 it may be to keep Logan Hospital open -- and I might
6 say that the Hospitals Corporation has closed its own
7 hospitals, your Honor, due to the fiscal plight, a
8 recently constructed hospital, Guvernor Hospital was closed,
9 your Honor --

10 THE COURT: You argue that. There is an obvious
11 difference between somebody who owns a facility saying
12 I am going to close it and somebody who doesn't own
13 a facility saying I am going to put it out of business.
14 That is so --

15 MR. WEINBERG: The Comptroller, your Honor -- no
16 one is trying to put Logan out of business, your Honor.

17 THE COURT: That is what Mr. Sullivan says the
18 Hospitals Corporation is doing. I haven't yet gotten
19 an answer from you as to whether Mr. Sullivan is accurately
20 reporting their state of mind.

21 MR. WEINBERG: Your Honor, I had argued in my
22 brief that the proper defendants weren't before this
23 Court. I agreed with your Honor that the title would
24 be amended and have them.

25 I don't know that Mr. Sullivan of the New York

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2 Times has printed accurately every statement was
3 told to him, or whether he has decided to leave out
4 statements, your Honor, or that this is his version.

5 THE COURT: Let me ask you this, Mr. Haywoode,
6 what would happen if I gave counsel here over the
7 weekend to find out whether that is so? It seems to me
8 that -- does that do you injury by delaying resolution
9 here?

10 MR. HAYWOODE: Well, your Honor, the only
11 terrible concern and fear that we have is that those
12 ambulances stop, because then everything else is rendered
13 meaningless.

14 THE COURT: I am going to direct an order that
15 nobody within the power of this Court, and on the state
16 of the present record there is no showing that the Hospitals
17 Corporation is not before me -- they have been informed
18 of this, and Mr. Weinberg has informed them himself,
19 and as a matter of fact, they have rescinded one order
20 apparently that they peculiarly got out.

21 I am directing that there is to be no interference
22 with this ambulance service in its present operation
23 whatsoever, certainly until I have concluded my
24 deliberations and rendered some opinion here.

25 MR. HAYWOODE: I would have no objection to

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2 that continuance.

3 THE COURT: Would you feel benefited by two
4 or three days here to ascertain what the facts are?

5 MR. WEINBERG: Your Honor, for me to investigate
6 I would have to contact each one of the members of the
7 Corporation, your Honor. They don't sit regularly. It
8 would require -- I will be very happy, but it is so
9 short a time, your Honor --

10 THE COURT: Mr. Weinberg, it seems to me that
11 somebody must have done something upon that article
12 coming out in the New York Times.

13 There must be an executive director of the
14 Hospitals Corporation who -- to whose attention it
15 came. There must have been some discussion. It seems
16 to me that there has been a lot of talking going on
17 about this, and the question is who said what and who
18 didn't say what.

19 MR. WEINBERG: I would appreciate, your
20 Honor, if I could have a few days. I have been jammed
21 up --

22 THE COURT: I would be delighted to give
23 it to you. Mr. Haywoode is willing that that should be,
24 assuming that it is crystal clear that there is to be
25 no midnight raid of Paul Revere to take the radios out

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2 of the ambulance.

3 MR. HAYWOODE: As to that part of it I have no
4 objection.

5 THE COURT: Or any other venture of that kind.

6 MR. WEINBERG: Could I have a week, your Honor?
7 At least a week, because I have other matters, or could --

8 THE COURT: I think you better use this week on
9 this matter, which is why I am giving you this week.

10 MR. WEINBERG: Your Honor, I cannot. I
11 cannot. I am the only one assigned to this case.

12 THE COURT: Then the alternative that I have,
13 Mr. Weinberg, is to go forward on the basis that these
14 are reported in the paper. I will treat them as having
15 been reported accurately and I will take it from there.

16 It seems to me there has been adequate
17 opportunity here for counsel to dispute these statements
18 attributed to --

19 MR. WEINBERG: Your Honor, I was unaware. I
20 don't think it is printed in the Times and the News.

21 THE COURT: It is in the moving papers.

22 MR. WEINBERG: I thought you were speaking of
23 the radios, your Honor.

24 THE COURT: The radios, we have sort of
25 tucked that back in the corner of our minds. I am

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2 talking about this Board saying we are out to put Logan
3 Hospital out of business.

4 MR. WEINBERG: May I have -- Mr. Haywoode,
5 I believe, consented -- may I have a week in which to
6 try to investigate and ascertain what went on, your
7 Honor?

8 THE COURT: Mr. Haywoode, does that-- I don't
9 want to put you in a position here with time obviously
10 of some consequence, I do any injury to your position
11 because Mr. Weinberg has had these papers, this investi-
12 gation could have been done, and if you feel that this --
13 if you can give me a good reason that this will be
14 of injury to you we will go forward without it. It did
15 seem to me better if we had a fuller record.

16 MR. HAYWOODE: May it please your Honor, the
17 urgency here is very apparent to everyone. We have
18 the Internal Revenue Service standing by watching
19 the hospital waiting for advances. Our urgency is
20 on the question of monies that are being withheld.

21 We are prepared to discontinue that matter below
22 in Bankruptcy Court. I have spoken with Levin and
23 Weinbrock on that, we are prepared, if the City will
24 consent, that subject matter jurisdiction is in this
25 court, we are prepared to do anything to get to a hearing on

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2 these issues.

3 I don't want to be unfair to counsel and I don't
4 want to be unfair to the record and the facts of this
5 case.

6 I am as curious as this Court or anyone here,
7 Mr. Weinberg or anyone else, as to what the members of
8 that Health and Hospitals Corporation are going to
9 say in the face of that, because they made these expressions
10 not only to Mr. Sullivan but in other places also.

11 If they can come forward and say that that is
12 not what they said, I am curious to hear that kind of
13 testimony. I don't want to betray the hospital's position
14 by saying fine, let's go on and go on and wait for these
15 people to come together.

16 I am reluctant to consent merely for that reason.

17 THE COURT: On the basis that there shall
18 be no interference whatsoever with the ambulance
19 service pending the further determination of this Court,
20 what -- where does that leave you in terms of the
21 monies that you contend are needed for cash flow?

22 MR. HAYWOODE: We would wish to move at the
23 earliest possible time towards some evidentiary
24 hearing on the issue of the withholding of the
25 funds, simply because that is what the Internal Revenue

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2 Service is pressing us for.

3 THE COURT: Obviously money is pressing, how
4 pressing is it?

5 MR. HAYWOODE: I don't believe that the
6 Internal Revenue Service is going to execute a loan
7 against us within the next week. If we tell them that
8 this matter is under the Court's advisement, they won't
9 do that, but still we have the State, the State is
10 pressing the hospital with tax liens. The City is
11 pressing the hospital with tax liens. We are under notice
12 now, deficiency notices are being taken against
13 individual directors and board members, trustees of the
14 hospital. City and State are pressing that. They are
15 saying that we are going to make a determination that
16 there is a tax deficiency.

17 Individuals are being told that they owe \$1,200,000
18 and this kind of amount of money. This is going on now.
19 This is why we would like to be able to relieve that
20 pressure. Individuals are being told that they are going
21 to pay this.

22 THE COURT: What is the expectation, the hope
23 that you would have either of this Court or of the
24 Bankruptcy Court in this regard? What is it that you are
25 looking for?

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2 MR. HAYWOODE: We would want to move as quickly
3 as possible, your Honor, to an evidentiary hearing on the
4 issue of the withholding of these monies and get some
5 determination of the right of the City as an agent,
6 and a fiduciary, almost, your Honor, to withhold these
7 monies.

8 He spoke about giving us money. They have us on
9 a ten day advance but they are saying should you go into
10 bankruptcy within ten days, we would not have given
11 you 30 days worth of money. That's what they are doing.
12 They are protecting their own interest.

13 If they are not recouping monies now it is
14 because they no they can't under the law. So what
15 is represented here as generosity is not generosity.
16 They are simply doing what the law makes clear that they
17 must do in terms of the debtor in possession.

18 THE COURT: Is that properly before me or properly
19 before the Bankruptcy Court?

20 MR. HAYWOODE: If your Honor please, the City
21 has questioned jurisdiction before the Bankruptcy Court.

22 MR. WEINBERG: Subject matter jurisdiction.

23 MR. HAYWOODE: Subject matter jurisdiction or
24 in personam jurisdiction, they are questioning the ability
25 of the Court to handle that issue. For that reason we are

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2 now before your Honor. If they have a problem as to
3 whether or not the Bankruptcy Court is the proper forum
4 to determine that issue, I have agreed with Levin &
5 Weinbrock that we will discontinue that action in the
6 Bankruptcy Court, where the City has a subject matter
7 jurisdiction problem.

8 THE COURT: What you are saying is in effect
9 that you would like a trial on the merits before me by
10 next week.

11 MR. HAYWOODE: Within reasonable time, giving
12 both sides time to produce --

13 THE COURT: What is reasonable time?

14 MR. HAYWOODE: Well, as quickly as counsel would
15 agree, we are prepared for the right to set forth a
16 claim.

17 THE COURT: The City I take has to put in an
18 answer to your complaint.

19 MR. HAYWOODE: That is correct. They have
20 granted an extension until May 15th on that. So
21 that under the circumstances it would obviously have to
22 be beyond that date.

23 MR. WEINBERG: If the Corporation, Logan --

24 THE COURT: I am trying to figure out schedules
25 here, Mr. Weinberg, and I am trying to figure out something

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that enables you to get at some homework that should have been done last week and also brings in the Corporation.-- the Hospitals Corporation firmly before us as a party, which I take it will be accomplished during the afternoon.

Suppose we put this on for 10:00 o'clock Thursday morning.

MR. HAYWOODE: That would be acceptable, your Honor. We have some election matters pending, and I may have to go to the Court of Appeals on them. But we can cover that in some other way, and Thursday morning will be fine.

THE COURT: Mr. Weinberg, in the meantime, you will have served the Hospitals Corporation this afternoon and made them a party to this case and determined just who is going to be their counsel and follow up on these questions that I put to you about these representations that are made as to their state of mind.

In the meantime, as I have said about three times now, it is and should be unequivocally clear that there is to be no interference with this ambulance service by anybody who is a party to this action or privy to such a party who has notice of the Court's order.

Anything else?

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MR. HAYWOODE: No, your Honor.

THE COURT: As I say, I am appreciative of the fact that there are time pressures here and I want to be sure I have not done any injury to your client by urging upon you this delay. You are confident in that regard?

MR. HAYWOODE: I don't believe, your Honor, that there will be any irreparable harm so long as the feeder service continues.

THE COURT: Very good. I will see you gentlemen and lady next week.

Mr. Hibsher, you didn't get a chance to say anything, but I don't think the time is right yet, is it?

MR. HIBSHER: Perhaps it is. May I point out that HEW is making a motion to dismiss on this matter. As soon as I get Mr. Haywoode's receipt of service I will hand the papers up.

HEW is pursuing its administrative remedies and one of the bases of our motions to dismiss is that plaintiff has not sought its administrative remedies here.

Mr. Weinberg --

THE COURT: Do your administrative remedies have any bearing whatever upon the feeder service of the ambulance?

MR. HIBSHER: It does not. We are taking no

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2 position as to the preliminary --

3 THE COURT: That is the only thing that is
4 really before me as of this moment.

5 MR. HIBSHER: Would your Honor clarify what the
6 hearing next Thursday is going to embrace and whether
7 HEW's participation will be needed.

8 THE COURT: I don't think it is essential at
9 this point.

10 MR. HIBSHER: Thank you.

11 THE COURT: You are representing --

12 MR. BIRCH: The State defendant, your Honor.

13 THE COURT: Do you have anything you feel needs
14 to be added this morning?

15 MR. BIRCH: Not at this minute. I assume that
16 the hearing next week will also be on the ambulance
17 question?

18 THE COURT: I am also obviously going to be
19 considering questions of scheduling of this monetary
20 problem which apparently needs as speedy as possible
21 resolution. I will be reaching that issue, I am sure,
22 in the course of discussing this with counsel.

23 MR. WEINBERG: I am a bit confused, your
24 Honor.

25 The petitioner in the bankruptcy proceeding is

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2 seeking an order compelling the City to pay the
3 \$2 million. We have moved -- a colleague of mine is
4 moving to dismiss.

5 THE COURT: I understand.

6 MR. WEINBERG: Will your Honor still feel
7 that without a decision from the Bankruptcy Court that this
8 is now before you?

9 THE COURT: I do. As of this moment it is before
10 me. Thank you.

11 (Adjourned at 11:45 a.m.)
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2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 ARTHUR C. LOGAN MEMORIAL HOSPITAL, :

6 Plaintiff, :

7 -against- : 77 Civ. 1216 (RO)

8 PHILIP L. TOIA, as Commissioner of :
9 Social Services of the State of :
10 New York, ROBERT P. WHALEN, as :
11 Commissioner of Health of the :
12 State of New York, HUGH L. CAREY, :
13 as Governor of the State of New :
14 York, JOSEPH A. CALIFANO, :
15 Secretary of the United States :
16 Department of Health, Education :
17 and Welfare, ABRAHAM BEAME, as :
18 Mayor of the City of New York, :
19 HARRISON J. GOLDIN, Comptroller :
20 of the City of New York and :
21 DONALD KUMMERFELD, as Director of :
22 the Budget of the City of New York :
23 and as Pro Tem Administrator of :
24 the Health and Hospitals :
25 Corporation, :

 Defendants. :

18 -----x
19 BEFORE:

20 HON. RICHARD OWEN,

21 District Judge

22 New York, New York

23 April 21, 1977 - 10:25 a.m.

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2 APPEARANCES:

3 M. DOUGLAS HAYWOODE, ESQ.,
4 Attorney for the Plaintiff,

5 W. BERNARD RICHLAND, ESQ.,
6 Corporation Counsel for the City of New York
7 BY: MILTON WEINBERG, ESQ.,
8 Of Counsel.

9 ALSO PRESENT:

10 DAVID BIRCH, ESQ.,
11 GEORGE E. PUGH

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 THE CLERK: Arthur C. Logan Memorial Hospital
 plaintiff against Philip L. Toia.

 Is the plaintiff ready?

 MR. HAYWOODE: Yes.

 THE CLERK: Is the defense ready?

 MR. WEINBERG: Yes.

 THE COURT: Good morning. Mr. Weinberg, in
 the parlance of the tennis player the ball is in your
 court this morning.

 MR. WEINBERG: Yes, sir.

 Your Honor, I have some papers which I have
 served on all counsel.

 THE COURT: Yes.

TRANSCRIPT OF PROCEEDING DATED APRIL 21, 1977

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2 (Document handed to the Court.)

3 THE COURT: Mr. Haywoode, have you had a
4 chance to go through these materials?

5 MR. HAYWOODE: Yes, your Honor. I received them
6 at 10:05 and I have looked through them.

7 THE COURT: Do you have any observation that you
8 want to call to my attention?

9 MR. HAYWOODE: Simply this, your Honor, in the
10 affidavit Mr. Weinberg I will point out, and it speaks
11 for itself, the accompanying affidavit of Mr. Kalkines,
12 that we have an affidavit by the general counsel of the
13 agency purporting to have talked to members of the Board
14 to have elicited certain evidentiary facts that they
15 placed before this Court. We have no affidavit by
16 the individuals themselves.

17 We have the only reference in the minutes of
18 the Board of Directors meeting to Logan Hospital that I
19 can see appears on page 1 of this quite voluminous document
20 unless I missed it. On page 15 the only relevant phrase
21 in this entire document I see relating to Logan Hospital
22 is the quotation of the Administrator of the Corporation
23 Dr. Holloma., where he says at line 16 that he is
24 delighted that the Corporation is moving in favor of
25 Sydenham Hospital, which he supported consistently.

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2 However, at line 20 "I do feel it is a move
3 against the community with a great health need to abruptly
4 terminate ambulance service with Logan. That is the reason
5 I am abstaining my vote."

6 I presume that -- we see no copy of the
7 resolution that is being referred to here. I presume it
8 might have been submitted previously in Mr. Weinberg's
9 other papers, Exhibit C of his affidavit submitted last
10 week.

11 But I am confused because the date on Exhibit C
12 appears to be February 10, 1977, the date of the alleged
13 resolution to discontinue the ambulance service. And the
14 date of the meeting is March 22, as I recall.

15 I would simply comment, that my objection to
16 the document is as to its relevance and the fact that we
17 do not have affidavits by parties, by persons who should
18 say forthrightly that they didn't do things which it appears
19 at least on the petitioner's papers that some of these
20 comments were made of their intent of the maliciousness
21 of that intent. And if Dr. Holloman's protestations
22 of page 15 of the minutes of the Hospital Corporation's
23 meeting is taken -- it simply reaffirms the character
24 in which the decision was taken.

25 THE COURT: You are looking at this resolution

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which -- that is strange, yes. That resolution is dated --

MR. HAYWOODE: February 10th, it appears.

MR. WEINBERG: I didn't realize that, your Honor.

I asked for the transcript of the meeting from which this resolution was adopted. I didn't realize that discrepancy, your Honor. I do believe -- I apologize, your Honor, because otherwise I would have certainly asked them about it. I asked them for the transcript of the meeting in which the resolution was adopted to ascertain whether any conversations were held among the members of the Board.

THE COURT: Mr. Weinberg, let me ask you this, in substance I was putting to you a week ago the question of whether or not Ronald Sullivan of the New York Times was accurately reporting, in the two articles that are set forth in the order to show cause.

MR. WEINBERG: Excuse me, your Honor. I thought you were concentrating on the one where someone said we are out to close Logan.

THE COURT: Yes, I know.

MR. WEINBERG: The other was the budget monies.

THE COURT: The second one attributes a statement to Dr. Holloman saying that he didn't support this move to deprive Logan of patients because he didn't

1 rsrf 6

2 want to stick a knife in their back.

3 MR. WEINBERG: He didn't vote no, he ^aobtained
4 from voting.

5 THE COURT: That would seem to be completely
6 consistent in the quotation of the minutes of March 22nd,
7 consistent with the quotation and the minutes of the
8 March 22nd at page 15 which Mr. Haywoode has just read to us.

9 The concern that I have is that time appears
10 to pass. I do not want to keep carrying this week to
11 week nor do I want to cause all sorts of -- be involved
12 with all sorts of Boards of Directors and have
13 administrators come in here. I still do not feel that there
14 has been any contravention, if you want to call it that,
15 of a statement such as that a Corporation official
16 said that the whole idea was to make sure that Logan
17 closed first, that the Corporation said if they can't get
18 any patients and money they will have to close.

19 I had sort of assumed that day I would hear
20 from you saying Mr. Sullivan is not telling the truth or
21 Ronald Sullivan is inaccurately reporting. Nobody
22 ever said that.

23 MR. WEINBERG: If your Honor please, how can I
24 possibly investigate and speak to every possible
25 Hospital Corporation official?

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2 THE COURT: A good starting point might have been
3 to call Mr. Sullivan.

4 MR. WEINBERG: I thought of that, your Honor.

5 THE COURT: Why didn't you pursue it?

6 MR. WEINBERG: Your Honor, I don't believe,
7 perhaps I made the wrong assumption, I don't believe that
8 newspaper reporters who quote an unnamed official will
9 gladly give me the name of that official, your Honor.

10 THE COURT: At least you could have tried.

11 MR. WEINBERG: Your Honor, I thought of that,
12 but I assume he would certainly tell me that he would not
13 reveal his sources. There are cases where the newspaper
14 reporters have gone to jail, your Honor, I am aware of that.

15 THE COURT: He might certainly sense he has gone
16 on record, he might have said yes, this is an official,
17 yes, it is true, yes, I would stand behind it. I may
18 not tell you that, but I am perfectly prepared to say
19 these things were said because I printed them.

20 The thing that troubles me is that I am frankly
21 on a knife edge of going forward on the basis of Mr.
22 Sullivan's newspaper articles alone, which the City
23 was given a week to deal with and I don't feel you have
24 dealt with them at all. You come in here with an affidavit
25 of Mr. Kalkines.

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2 MR. WEINBERG: Kalkines, your Honor.

3 THE COURT: He talked to some members of the
4 Board, Mr. Kalkines, in a purported synthesis of what
5 seven people told him. He said they denied any attempt
6 to force their closure or terminate the ambulance service.
7 That is not only hearsay, but I don't know what the
8 question was he put, I don't know whether he said did any
9 of you tell Mr. Sullivan this, I don't know whether the
10 Corporation official was even a member of the Board of
11 Directors.

12 MR. WEINBERG: I don't either, your Honor.

13 THE COURT: He might have been an executive
14 director and an assistant to the executive director.

15 MR. WEINBERG: If your Honor please, I grant
16 what I have given you is hearsay. But Mr. Ronald Sullivan's
17 article is double hearsay, if I may put it that way.
18 There is an unnamed official who gives his version of what
19 a Board of resolution -- what a resolution by the Board
20 will do. I believe you --

21 THE COURT: He said what the purpose of the
22 resolution --

23 MR. WEINBERG: Excuse me. It is the Board's
24 motives and it doesn't matter, if all the officials who
25 are not on the Board felt by terminating this service,

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2 Logan might close, if the Board had no such intention,
3 your Honor, it is their state of mind, you asked me that,
4 sir. What is the state of mind of the Board of Directors.
5 I am talking about this Board saying we are out to put
6 Logan out of business. That, sir, was your statement
7 and I respectfully state that Mr. Sullivan in his article
8 is not quoting the Board. And even assuming you did have
9 some members of the Board who had that motive, this was
10 8 to 2, 2 absentions, it says so, your Honor, on the
11 resolution itself.

12 Again, it seems to me that if a majority of
13 those who voted to close Logan were not motivated by
14 a malevolence, disinterested malevolence, it doesn't
15 matter, sir, what the state of mind of the other Board
16 members were.

17 THE COURT: Let me ask you this:

18 You read this article and it says the
19 whole idea said a Corporation official yesterday is to
20 make sure that Logan closes first. All right.

21 As I read this, frankly more carefully this
22 morning, it would appear that that Corporation official
23 is not a member of the Board. With that end in mind
24 Mr. Sullivan goes on, and I gather at this point now
25 he is paraphrasing what this official is telling him,

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2 the Corporation officials with the apparent support of
3 City Hall, are expected to propose to the Corporation Board
4 of Directors that they approve discontinuing the emergency
5 ambulance service to Logan.

6 Suppose the Board of Directors is sitting there
7 and they don't realize that what they are being asked to
8 do is innocently to perform an act which the Administrators
9 of the Corporation intend to use illegally. Then frankly
10 it doesn't make a particle of difference in my judgment
11 what the Board of Directors thought, if what they were
12 being asked to do was to give authority for something
13 that was going to be used in an improper way.

14 I am very troubled with this.

15 MR. WEINBERG: If your Honor pleases --

16 THE COURT: Excuse me.

17 (Pause.)

18 THE COURT: Mr. Haywoode, do you have any further
19 proof that you wish to offer to me?

20 MR. HAYWOODE: Your Honor, at this point, no,
21 we have no other evidentiary matter. I would simply submit
22 that it was certainly possible to obtain forthright
23 affidavits. I know Mr. Kalkines and I know his competence.
24 I know that he has been admitted to the practice of law
25 for many years. I am sure that he realizes it would

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2 have been a simple process to prepare affidavits and sub-
3 mit it to the necessary parties and get affirmative
4 denials that they engaged in this kind of conduct and
5 they acted with this intention or that they made these
6 statements to someone else. I would think that that
7 burden would carry the information --

8 THE COURT: Excuse me. I think it is crystal
9 clear that I placed upon Mr. Weinberg a week ago the
10 duty to follow up this Sullivan article; and it is crystal
11 clear reading the article that the Corporation official
12 is some executive of the Corporation. I don't find that
13 any effort has been made to make any search whatsoever,
14 no effort has been made to deal with Mr. Sullivan, inquiry
15 of him. No effort has been made to speak to any
16 Corporation official or Dr. Holloman who is quoted in here
17 as saying this is a knife stuck in Logan's back.

18 MR. WEINBERG: Excuse me, your Honor.

19 THE COURT: I don't have anything before me
20 with regard to what he has to say.

21 MR. WEINBERG: I did call three people in the
22 Hospitals Corporation and asked them if they could
23 identify the official. I called the general counsel,
24 Kalkines, the assistant counsel Cohn, I called Jack
25 Koretsky, I believe he is senior vice-president in charge

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2 of operations, none of them could tell me who had spoken
3 to Mr. Sullivan.

4 May I say further, your Honor, when you asked
5 me last Thursday to notify the Board of Directors that they
6 were parties, I did so. I notified both the assistant
7 counsel and Kalkines of the information that you requested
8 and I requested them to obtain affidavits from members
9 of the Board of Directors. This was last Thursday,
10 your Honor. But if I may say, your Honor, I believe,
11 I respectfully believe that you were in error in believing
12 that if the people or the person who spoke to Mr. Sullivan
13 is not a Board member, that this would constitute a
14 prima facie case even if that person had the intent where
15 the members of the Board of Directors didn't realize
16 what they were doing and their frame of mind was such that
17 they had no malevolence.

18 In addition, your Honor, the law on prima
19 facie tort is that if there is any other motive, your
20 Honor, and I am citing New York law, whether it be self-
21 interest, gain or business advantage, your Honor, there
22 is no cause of action for prima facie tort.

23 This complaint is saturated with allegations
24 that the City is favoring Sydenham Hospital. It is self-
25 interest on the part of the City, and self-interest

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on the part of the Hospitals Corporation. Thus there can be no valid claim of a prima facie tort.

THE COURT: I shall doubt this right briefly further hereafter. I am going to grant the preliminary injunction that the hospital seeks. I am going to make a few remarks on the record so that you gentlemen here will have a rough basis for where I am at.

First, so that we get our factual underbrush out of the way, the adjournment of a week here was granted although there had been an adjournment granted of ten days or more --

MR. WEINBERG: Two weeks, sir.

THE COURT: --because the City needed more time to respond. In addition to that two weeks there was an additional week given. That additional week was where the Court expressly, focusing counsel for the City on the factual matters raised in the Sullivan articles and particularly that of Martin. I do not find before me any satisfactory rebuttal of that.

I have discussed some of this earlier and I will not get into any detail, except that certain members of the Board have given by hearsay blanket denials which I do not feel meet the issue, either in terms of statement or competence.

Further, I note from this article that nobody has denied this, that Sydenham does not have an ambulance ramp, and nobody has denied the fact on this record that that is so and that its facilities are not in a position to take up the slack on this, and indeed last week you told me that if Logan closed patients would be shipped as far away as 80th Street, and over to Morningside Drive, and things of that kind. They would be taken care of.

Albeit they would have to be motored some distance and presumably the ambulances would have to come from some distance.

Given this, and given the fact that in a sense I find as a fact that to turn off this service would cut off patients and given Logan's situation at this point, that cut off of patients would doubtless result in its destruction as a hospital, I find irreparable injury if this were to be permitted.

Turning to the other branch for motions for preliminary injunctions to wit is there a likelihood of success on the trial from all that is before me given the factual posture that the City has chosen to leave the case in, I find a very strong showing of a likelihood of success on the trial. Those branches being met, the preliminary injunction is granted.

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2 Mr. Haywoode, do you need to submit an order
3 that more fully spells out the certain details of the
4 relief or is it sufficient that I have granted it in the
5 broad form that I have?

6 MR. HAYWOODE: Yes, your Honor, I suspect that
7 a more fuller order might be required. We will prepare
8 it and bring it to your Honor.

9 THE COURT: I will ask you to submit an order
10 on notice: as soon as you can reasonably do it.

11 MR. WEINBERG: If the Court please, if I may
12 briefly: I had in my argument mentioned that the ambulance
13 district that Logan covers is from 80th Street to 150th
14 Street. I believe your Honor may have misunderstood
15 what I said.

16 In other words, the Logan ambulances today
17 can cover as far down as 80th Street.

18 THE COURT: I understand. When we were talking
19 last week -- and I am not holding you or me to specifics --
20 your answer to me when I said what happens if Logan
21 goes out of operation because I was concerned about the
22 community service that would be lost, which is apparently
23 a very valuable and busy and ongoing one, your answer
24 was that there were other hospitals at some distance
25 from Logan in two or three directions that could pick

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2 up this slack. I am pointing out that I see no need
3 certainly on this record to either put the burden on
4 those hospitals to pick it up, to put the injury to the
5 community upon itself by denying them ambulance service
6 that is presently located right in their midst, and
7 is in operation.

8 There is no need why people in the community
9 shouldn't have ambulance service to a close point rather
10 than having to be ambulated to a distant point at the
11 loss of time both in coming and going and possible risks
12 to patients.

13 MR. WEINBERG: Your Honor, Harlem and Sydenham
14 are in close proximity.

15 THE COURT: Sydenham doesn't have an ambulance
16 ramp. I don't see any point in patients being carried
17 in by attendants through jerrybuilt facilities under
18 the record that is presently before me.

19 MR. WEINBERG: I would assume, your Honor,
20 if Sydenham does get patients that they would make
21 alterations.

22 THE COURT: One official there according to
23 Mr. Sullivan said, don't worry about it, we will carry
24 the patients one way or another.

25 MR. WEINBERG: He may have been the

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1 dietician, your Honor. Again, Mr. Sullivan doesn't quote.

2 THE COURT: Nobody has told me that he is the
3 dietician. Therefore, I assume that he speaks with some
4 authority. All right, the motion for preliminary injunction
5 is granted.
6

7 MR. WEINBERG: Your Honor, excuse me.

8 THE COURT: I am going to confer with Judge
9 Lewittes with regard to the problem of the monies that are
10 owed you and how best to handle the hearings that must
11 eventuate. I will get to you on that score.

12 MR. HAYWOODE: Yes.

13 MR. WEINBERG: Your Honor, I have given you
14 certain cases in which I have asked this Court on its own
15 motion to dismiss this complaint for failure to state
16 a claim upon which relief was requested. I assume, therefore,
17 your Honor, that by your granting the motion, you have
18 considered this and denied it.

19 THE COURT: No. I suppose that that motion
20 will come to be heard before me at a motion, when Mr.
21 Haywoode has a chance to respond. If you would like we
22 will put it down for two Thursdays from today.

23 MR. HAYWOODE: If your Honor please, the
24 Federal Government made a similar answer or they
25 answered in the same way, with respect to jurisdiction.

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2 I don't know if they intend -- let's see, the Federal
3 Government made the motion.

4 THE COURT: That is on for next Thursday.

5 MR. HAYWOODE: If your Honor please, I would
6 need an extra week from that time. I did mean to talk to
7 Mr. Hibsher about that.

8 THE COURT: Will you inform Mr. Hibsher that I
9 granted that week.

10 MR. HAYWOODE: I assume that the City will make
11 a similar motion.

12 THE COURT: It claims it has. In the papers
13 that were given to me today --

14 MR. WEINBERG: I am asking the Court on its own
15 motion sua sponte to dismiss.

16 THE COURT: On my own motion I will decline
17 to act. Having heard both sides I will give more
18 consideration.

19 MR. WEINBERG: Two weeks from today.

20 THE COURT: Yes. We will argue that upon full
21 briefing by all sides.

22 (Adjourned at 11:10 a.m.)

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AFFIDAVIT OF SERVICE ON ATTORNEY OF PRINTED PAPERS

City, County and State of New York, ss.:

being duly sworn, says, that on the 27 day of JULY, 1977
 at No. 500 - 5th AVE. in the Borough of MAN.H. in The City of New York, he served three copies
 of the annexed JOINT APPENDIX upon MR. DOUGLAS HAYWARD Esq.,
 the attorney for the PLTFF - RESP. in the within entitled action by delivering
 three copies of the same to a person in charge of said attorney's office during the absence of said attorney therefrom, and
 leaving the same with him.

Sworn to before me, this 27day of JULY, 1977

BRUCE S. GARNER
 Commissioner of Deeds
 City of New York - No. 4-1786
 Commission Expires May 1, 1978